

Memorandum 2006-31

**Statutes Made Obsolete by Trial Court Restructuring:
Part 3 (Draft of Tentative Recommendation)**

Attached for the Commission's consideration is a draft of a tentative recommendation, which would implement decisions made at the June meeting relating to statutes made obsolete by trial court restructuring. The draft also includes a proposed amendment of Code of Civil Procedure Section 688.010, which governs jurisdiction to enforce a state tax liability pursuant to a warrant or a notice of levy. That topic is discussed below. The Commission needs to consider the new issues raised and review the remainder of the draft. The Commission should then decide whether to approve the draft as a tentative recommendation for circulation for comment, as is or with revisions.

Jurisdiction to Enforce a State Tax Liability Pursuant to a Warrant or a Notice of Levy (Code Civ. Proc. § 688.010)

At the June meeting, the Commission discussed how to revise a number of provisions that could, but need not necessarily, be construed to confer concurrent jurisdiction on the municipal and superior courts. Put differently, these provisions conceivably could be interpreted such that a litigant would have a choice of whether to pursue a particular claim in municipal court or in superior court. The Commission examined the context of each provision, decided the probable intent, and tentatively determined how to revise the provision to faithfully preserve that intent in a unified court system. See CLRC Minutes (June 2006), at pp. 29-44; CLRC Memorandum 2006-22, pp. 7-35. These decisions are implemented in the attached draft (see the proposed amendments to Bus. & Prof. Code §§ 6455, 12606, 12606.2; Code Civ. Proc. § 580; Food & Agric. Code §§ 29733, 43039, 59289; Gov't Code §§ 12965, 12980).

One provision appeared more complicated than the others, and the staff requested more time to review that provision before analyzing it for the Commission. That provision is Code of Civil Procedure Section 688.010, which

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

governs jurisdiction to enforce a state tax liability pursuant to a warrant or a notice of levy. Unlike the other provisions, this provision unambiguously provides for municipal court jurisdiction in circumstances in which the superior court also has jurisdiction:

688.010. For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, *regardless of whether the municipal court also has jurisdiction* under subdivision (b).

(b) The municipal court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

(Emphasis added.)

Legislative History

Section 688.010 was originally enacted in 1982, as part of the Enforcement of Judgments Law, a comprehensive and voluminous reform recommended by the Law Revision Commission. 1982 Cal. Stat. ch. 1364; see *Recommendation Relating to Enforcement of Judgments Law*, 16 Cal. L. Revision Comm’n Reports 2001 (1980) (hereafter “EJL Recommendation”). The Commission’s Comment states:

Comment. Section 688.010 supersedes a portion of former Section 689d, a portion of the second sentence of former Section 690.51, and a portion of the second sentence of former Section 722.5. *Under former law, jurisdiction was in the superior court exclusively.*

(Emphasis added.) The Commission’s recommendation states:

Under existing law, the superior court has jurisdiction when judicial proceedings are required for the enforcement of a tax liability.[FN 555] The proposed law continues the provision for superior court jurisdiction and adds concurrent jurisdiction in the municipal or justice court when the amount of the tax claim being enforced is within the jurisdictional limits of the municipal or justice court and the legality of the tax liability is not contested.

FN 555. See Sections 689d, 690.51, 722.5.

EJL Recommendation at 1153.

Both the Commission’s Comment and its recommendation were presented to the Legislature while the Enforcement of Judgments legislation was pending. They are entitled to substantial weight in construing the legislation. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 11 P.3d 954, 28 Cal. Rptr. 3d 685

(2005); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 143 Cal. Rptr. 717 (1978); *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 36 (2005); 2005-2006 *Annual Report*, 35 Cal. L. Revision Comm'n Reports 1 (2005) & sources cited. Unfortunately, however, neither the Comment nor the recommendation provides any explanation of *why* the Commission recommended that there be concurrent jurisdiction — i.e., why (1) superior court jurisdiction of proceedings relating to enforcement of a state tax claim pursuant to a warrant or a notice of levy, should be supplemented with (2) concurrent municipal and justice court jurisdiction of such proceedings, so long as the amount at stake was within the jurisdictional limit of the municipal or justice court and the legality of the tax liability was uncontested.

Section 688.010 was amended in 1998 to delete an obsolete reference to justice court. Other than that, the provision has not been changed since it was first enacted.

History of the Law Revision Commission Study

The staff searched the Commission's hard copy and electronic records in hopes of finding insight into why the Commission recommended that the jurisdictional rule be changed. Unlike Commission Comments and recommendations, materials such as staff memoranda and tentative recommendations generally cannot be used to determine legislative intent because they are not presented to the Legislature during the legislative process. Such materials can, however, be useful for their analytical value. See 2005-2006 *Annual Report*, *supra*, at 23-24.

In this instance, we did not find any clear explanation of why the Commission took the jurisdictional approach implemented in Section 688.010. The background materials are nonetheless illuminating to some extent.

Each of the provisions superseded by Section 688.010 (former Code Civ. Proc. §§ 689d, 690.51, 722.5) expressly provided for *superior court* jurisdiction of specified proceedings to enforce state tax liability. See Exhibit pp. 1-2. At the same time, Code of Civil Procedure Section 86(a)(1) gave the municipal and justice courts jurisdiction of civil cases at law where the amount in controversy was \$5,000 or less, "except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except such courts shall have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if

the legality of the tax is not contested by the defendant.” 1976 Cal. Stat. ch. 1288, § 5.

It is clear from the Commission materials that the Commission was aware of Section 86(a)(1), giving the municipal court authority to decide a claim for delinquent unsecured personal property taxes where the legality of the tax was uncontested. It is also clear that the Commission was interested in exploring the extent to which it would be good policy to allow a municipal court to consider various tax enforcement matters. See CLRC Minutes (May 1978), p. 5; CLRC Memorandum 78-34, pp. 1-3; CLRC Memorandum 78-37, p. 1 & Attachment p. 2-2. As best we can tell, there were no comments requesting that the Commission take a particular approach to this matter. The staff apparently did have some discussions about jurisdiction of a third-party claim (a claim by a third person to property levied upon by the State for payment of a debtor’s taxes) with a few attorneys involved in collecting taxes. The reported consensus of those attorneys was that there “is no identifiable policy reason for hearing third-party claims in superior court although it is more convenient because they have to deal with only one court.” CLRC Memorandum 78-34, p. 2. The provision that became Section 688.010 went through a number of revisions before it was enacted, but the Commission materials do not describe the reasons for these revisions in any detail.

Analysis Underlying the Commission’s Recommendation

What was the thinking behind the revisions calling for concurrent jurisdiction? Our best guess is that Section 688.010 represents an attempt to reconcile (1) the three provisions it superseded (former Code Civ. Proc. §§ 689d, 690.51, 722.5), which each provided for superior court jurisdiction of specified state tax enforcement proceedings, with (2) the legislative policy underlying the then-existing version of Code of Civil Procedure Section 86(a)(1).

Then-existing Section 86(a)(1) appears to reflect a legislative determination that municipal and justice courts are competent to resolve a tax claim, at least one involving “delinquent unsecured personal property taxes,” so long as the claim is within the court’s jurisdictional limit and there is no dispute relating to the legality of the tax. Section 688.010 reinforces and expands the scope of that policy determination; the provision gives a municipal or justice court jurisdiction of any claim relating to enforcement of a state tax liability by a warrant or a notice of

levy, so long as the claim is within the court's jurisdictional limit and the legality of the tax liability is uncontested.

But why does the statute provide for concurrent jurisdiction, such that the same dispute could either be resolved in a superior court or in a municipal or justice court? Perhaps the Commission took this approach for the reasons of convenience referred to in the staff's memorandum on third-party claims — i.e., the ease of having all related claims heard in the same court, instead of trying one or more tax claims in superior court and trying a related claim in municipal or justice court. We cannot be sure, but this seems a reasonable possibility.

Revision of Section 688.010 to Reflect Trial Court Unification

Given the preceding discussion of the history of Section 688.010 and the possible intent in drafting the provision, how should the provision be revised to reflect the elimination of the municipal courts?

In a unified court system, the superior court hears all types of civil cases, both traditional superior court cases (now known as unlimited civil cases) and traditional municipal court cases (now known as limited civil cases). Thus, regardless of whether a tax enforcement case is classified as limited or unlimited, it will be heard by the same court as a related tax enforcement case, so long as both cases are brought in the same county. If convenience was the reason for concurrent jurisdiction in Section 688.010, that reason no longer applies, at least not with the same force as in the past.

The convenience of trying related cases in the same court would only be a relevant factor at the appellate level — i.e., if a superior court decided two related tax cases, a limited civil case and an unlimited civil case, and both decisions were appealed. Then the decision in the unlimited civil case would be appealable to the court of appeal, while the decision in the other case would be appealable to the appellate division. That situation probably would be rare. It would not seem to justify a deviation from the normal practice of requiring a particular type of case to be classified as either limited or unlimited, as opposed to allowing a choice of which classification to use (the equivalent of concurrent jurisdiction in a unified court).

Further, it might not be constitutional to allow a choice of how to classify a particular type of matter. Before unification, the California Constitution said that “[s]uperior courts have original jurisdiction in all causes except those given by statute to other trial courts.” Former Cal. Const. art. VI, § 10. Case law

interpreted this provision to mean that the superior court “does not have concurrent jurisdiction with the municipal courts within the same county.” *Williams v. Superior Court*, 219 Cal. App. 3d 171, 175 n.4, 268 Cal. Rptr. (1990). As one court explained, when the Legislature gave jurisdiction to the municipal courts by statute, the jurisdiction of the superior court was to that extent reduced. *Marlow v. Campbell*, 7 Cal. App. 4th 921, 925-26, 9 Cal. Rptr. 2d 516 (1992). Put differently, courts took the view that municipal court jurisdiction was carved out of superior court jurisdiction; the two types of jurisdiction could not constitutionally overlap. *Id.* at 926; *Castellini v. Municipal Court*, 7 Cal. App. 3d 174, 176, 86 Cal. Rptr. 698 (1970).

Similarly, although the concept of a limited civil case is not embedded in the current California Constitution, the constitutional provision governing appellate jurisdiction might be interpreted to preclude concurrent appellate jurisdiction. Under that provision, the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute, *except* where the appellate courts have appellate jurisdiction. Cal. Const. art. VI, § 11. Courts might interpret this language to mean that a particular type of cause must either be appealable to the appellate division or appealable to an appellate court, but not both. Consequently, courts might invalidate a statute that permits a particular type of cause to be classified as either a limited civil case or an unlimited civil case. In effect, a statute like this would put such a cause within the appellate jurisdiction of both the appellate division and the court of appeal.

For these reasons, it seems inadvisable to continue the concurrent jurisdiction feature of Section 688.010. Rather, we suggest **revising Section 688.010 to mandate that a tax enforcement proceeding be classified as a limited civil case under specified circumstances:**

Code Civ. Proc. § 688.010 (amended). Classification of proceeding to enforce state tax liability pursuant to warrant or notice of levy

SEC. _____. Section 688.010 of the Code of Civil Procedure is amended to read:

688.010. ~~For~~ A proceeding for the purpose of the remedies provided under this article, ~~jurisdiction is conferred upon any of the following courts:~~

~~(a) The superior court, regardless of whether the municipal court also has jurisdiction under subdivision (b).~~

~~(b) The municipal court~~ article is a limited civil case if (1) the amount of liability sought to be collected does not exceed the

~~jurisdictional amount of the court~~ maximum amount in controversy for a limited civil case provided in Section 85, and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

Comment. Section 688.010 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

In a unified court system, the superior court has original jurisdiction of all causes except certain writ proceedings. Cal. Const. art. VI, § 10. Consequently, it is no longer necessary to specify which court has jurisdiction of a proceeding under this article. Language to that effect is deleted as obsolete.

Before unification, both the superior court and the municipal court had jurisdiction of a proceeding under this article if the amount sought was within the jurisdictional limit of the municipal court and the legality of the liability was uncontested. In a unified court system, that would be equivalent to permitting such a proceeding to be treated as either a limited civil case or an unlimited civil case. See Sections 85 & Comment (limited civil cases), 88 (unlimited civil cases). This concurrent jurisdiction feature is not continued. Under Section 688.010 as amended, it is mandatory, not optional, to treat a proceeding under this article as a limited civil case if the amount in controversy is within the maximum for a limited civil case and the legality of the liability is uncontested.

The Commission should also **propose a conforming revision in Code of Civil Procedure Section 688.030:**

Code Civ. Proc. § 688.030 (amended). Exemption or third-party claim when property is levied on for tax collection

SEC. _____. Section 688.030 of the Code of Civil Procedure is amended to read:

688.030. (a) Whenever pursuant to any provision of the Public Resources Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the

property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the superior court ~~specified in Section 688.010~~ in the county where the property levied upon is located.

Comment. Section 688.030 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

The attached draft incorporates this conforming revision, as well as the suggested amendment of Section 688.010.

Respectfully submitted,

Barbara Gaal
Staff Counsel

Exhibit

**PROVISIONS SUPERSEDED BY
CODE OF CIVIL PROCEDURE SECTION 688.010**

Former Code of Civil Procedure Section 689d (1971 Cal. Stat. ch. 873 § 1)

689d. In cases in which a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341 or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to said state, a department or agency thereof, a hearing, for the purpose of determining title to the property in question as provided in Section 689 of this code, *may be held by the superior court* of the county, or city and county, in which the property levied upon is located.

(Emphasis added.)

Former Code of Civil Procedure Section 690.51 (1977 Cal. Stat. ch. 305, § 5)

690.51. In cases in which a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department or agency thereof, the tax debtor shall be entitled to the exemptions provided in Sections 690.1 to 690.31, inclusive, and, where applicable, the provisions of Section 690.50 shall govern the assertion and determination thereof. *The superior court of the county, or city and county, in which the property levied upon is located shall have jurisdiction* to hear and determine the validity of the claim of exemption or the value of the property claimed exempt, whether or not the value of the property determines the right to exemption, in like manner as if the property were levied upon by writ of execution issued by such court.

(Emphasis added.)

Former Code of Civil Procedure Section 722.5 (1963 Cal. Stat. ch. 1664, § 1)

722.5. Whenever a warrant may properly be issued pursuant to Section 1785 of the Unemployment Insurance Code or Sections 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code to enforce any lien arising under the provisions of the Unemployment Insurance Code or the Revenue and Taxation Code, the state agency authorized to issue the warrant shall be

entitled to all of the remedies available to judgment creditors. Where jurisdiction of any court is required for enforcement of such remedies, *jurisdiction is conferred upon the superior court of the State of California* in and for the county where the person against whom enforcement is sought resides or the property against which enforcement is sought is situated, or if the person does not reside in this State, in any county of this State.

(Emphasis added.)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

<h2>STAFF DRAFT</h2>

TENTATIVE RECOMMENDATION

Statutes Made Obsolete by Trial Court Restructuring: Part 3

[Date To Be Determined]

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **[date to be determined]**.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission

4000 Middlefield Road, Room D-1

Palo Alto, CA 94303-4739

650-494-1335

<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

In the past decade, California's trial court system has been dramatically restructured. As a result, hundreds of sections of the California codes became obsolete, in whole or in part.

By statute, the Law Revision Commission is responsible for revising the codes to reflect trial court restructuring. The Commission has already done much work along those lines and several major reforms have been enacted. But some statutes have not yet been revised, because stakeholders could not reach agreement on key issues, further research was necessary on complex legal matters, or additional time was required to prepare appropriate revisions due to the large volume of material involved.

Of the work that remains to be done, this recommendation addresses the following areas:

- Court appearance by two-way audiovideo communication.
- Appellate jurisdiction.
- Writ jurisdiction in a small claims case.
- Statutes that might be construed to confer concurrent jurisdiction on the municipal and superior courts.

The Commission is continuing its work on trial court restructuring and plans to address other subjects in future recommendations.

This recommendation was prepared pursuant to Government Code Section 71674.

1 STATUTES MADE OBSOLETE BY TRIAL
2 COURT RESTRUCTURING: PART 3

3 Over the past decade, California’s trial court system has been dramatically
4 restructured. Major reforms include:

- 5 • State, as opposed to local, funding of trial court operations.¹
- 6 • Trial court unification on a county-by-county basis, eventually occurring in
7 all counties. Trial court operations have been consolidated in the superior
8 court of each county and municipal courts no longer exist.²
- 9 • Enactment of the Trial Court Employment Protection and Governance Act,
10 which established a new personnel system for trial court employees.³

11 As a result of these reforms, hundreds of sections of the California codes
12 became obsolete, in whole or in part. The Legislature directed the Law Revision
13 Commission to revise the codes to eliminate the obsolete material.⁴

14 The Commission has already done extensive work in response to this directive,
15 and several measures have been enacted to implement the Commission’s
16 recommendations.⁵ Some work has not yet been completed, because stakeholders
17 could not reach agreement on key issues, further research was necessary on
18 complex legal matters, or additional time was required to prepare appropriate
19 revisions due to the large volume of material involved.⁶

20 Of the topics that still require attention, this tentative recommendation addresses
21 the following:

1. The Lockyer-Isenberg Trial Court Funding Act, enacted in 1997, made the state responsible for funding trial court operations. See 1997 Cal. Stat. ch. 850; see generally Gov’t Code §§ 77000-77655.

2. In 1998, California voters approved a measure that amended the California Constitution to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220). By early 2001, unification had occurred in all 58 counties.

3. 2000 Cal. Stat. ch. 1010; see Gov’t Code §§ 71600-71675.

4. Gov’t Code § 71674.

5. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002) (hereafter “*TCR: Part I*”), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003) (hereafter “*TCR: Part I*”), implemented by 2003 Cal. Stat. ch. 149; see also *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51 (1998) (hereafter “*Revision of Codes*”), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification); 1999 Cal. Stat. ch. 344 (same); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999) (hereafter “*Report on Chapter 344*”).

6. For a detailed summary of the work that remains to be done, see Commission Staff Memorandum 2006-9 (available from the Commission, www.clrc.ca.gov).

- Court appearance by two-way audiovideo communication.
- Appellate jurisdiction.
- Writ jurisdiction in a small claims case.
- Concurrent jurisdiction.

The Commission has studied each of these topics and reached tentative conclusions regarding how to revise the pertinent statutes to reflect trial court restructuring.

The Commission solicits comments on the recommended reforms. The Commission also encourages comments on other statutory provisions that still need to be revised to reflect trial court restructuring.

RECOMMENDED REFORMS

Each of the following reforms relates to trial court unification, a process that began in 1998, when California voters approved a measure permitting the municipal and superior courts in each county to unify.⁷ The same year, the codes were revised on Commission recommendation to accommodate unification — i.e., to make the statutes workable in a county in which the municipal and superior courts decided to unify.⁸ In determining how to revise the codes to accommodate unification, a guiding principle was “to preserve existing rights and procedures despite unification, with no disparity of treatment between a party appearing in municipal court and a similarly situated party appearing in superior court as a result of unification of the municipal and superior courts in the county.”⁹

By 2001, the municipal and superior courts in all 58 California counties had unified their operations in the superior court.¹⁰ It thus became possible to further revise the codes to reflect that municipal courts no longer existed. Many revisions along these lines were enacted on Commission recommendation in 2002 and 2003.¹¹ Some provisions were not revised at that time because they were complex and required further study. This tentative recommendation addresses a number of those matters. As before, the Commission has tried to maintain the pre-unification status quo, while making the law workable in a unified court system.

7. 1996 Cal. Stat. res. ch. 36 (SCA 4), approved by the voters June 2, 1998 (Proposition 220).

8. *Revision of Codes*, *supra* note 5, implemented by 1998 Cal. Stat. ch. 931; see also 1999 Cal. Stat. ch. 344; *Report on Chapter 344*, *supra* note 5.

9. *Revision of Codes*, *supra* note 5, at 60; see also [case citations to be provided].

10. The courts in Kings County were the last to unify, on February 8, 2001.

11. See *TCR: Part 1*, *supra* note 5, implemented by 2002 Cal. Stat. ch. 784 & ACA 15 (Proposition 48), approved by the voters Nov. 5, 2002; *TCR: Part 2*, *supra* note 5, implemented by 2003 Cal. Stat. ch. 149.

1 Court Appearance by Two-Way Electronic Audiovideo Communication

2 By statute, a court may conduct certain proceedings in a criminal case by two-
3 way audiovideo communication under specified circumstances.¹² The pertinent
4 provisions each contain a reference to “an initial hearing in superior court in a
5 felony case.”¹³ Due to trial court unification, these references are ambiguous.

6 Before trial court unification, a felony defendant was either:

- 7 (1) Indicted and arraigned on the indictment in superior court,¹⁴ or
- 8 (2) Arraigned on a complaint before a magistrate, almost always in municipal
9 court. If held to answer at a preliminary hearing, the defendant would later
10 be arraigned on an information in superior court.¹⁵

11 Thus, when the provisions governing the use of two-way audiovideo
12 communication were enacted, the phrase “initial hearing in superior court in a
13 felony case” could only refer to an arraignment on an indictment or an
14 arraignment on an information. The phrase could not be construed to include an
15 arraignment on a complaint, because such an arraignment typically did not occur
16 in superior court.

17 Now that municipal courts no longer exist, the situation is different. Under the
18 second approach for initiating a felony prosecution, both the arraignment on the
19 complaint and the arraignment on the information are conducted in superior
20 court.¹⁶ A court or party might thus construe the phrase “initial hearing in superior
21 court in a felony case” to include an arraignment on a complaint, contrary to the
22 statutory intent.

23 The Law Revision Commission therefore recommends that the provisions
24 governing the use of two-way audiovideo communication be amended to prevent
25 such misinterpretation. This could be achieved by replacing the phrase “initial
26 hearing in superior court in a felony case” with a more precise phrase, either
27 “arraignment on an information” or “arraignment on an information or

12. Penal Code §§ 977, 977.2.

13. Penal Code §§ 977(c), 977.2(b).

14. Cal. Const. art. I, § 14; Penal Code §§ 737, 976; California Criminal Law Practice and Procedure
Arraignment § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at 188 (CEB 2006); California Judges
Benchbook: Criminal Pretrial Proceedings *Commencing the Action* § 1.1, at 3 (CJER 1991); [additional
support to be provided].

15. Cal. Const. art. I, § 14; Penal Code §§ 737, 738, 806, 866, 872, 976; former Penal Code § 1462;
California Criminal Law, *supra* note 14, *Arraignment* § 6.10, at 144-45, *Preliminary Hearings* § 8.1, at
188-89; California Judges Benchbook, *supra* note 14, *Commencing the Action* § 1.1, at 3; [additional
support to be provided].

16. Technically, the arraignment on the complaint is before a superior court judge acting as magistrate
(see Cal. Const. art. I, § 14), rather than before the superior court. This distinction is subtle and insufficient
to prevent confusion about whether the phrase “initial hearing in superior court in a felony case” includes
an arraignment on a complaint.

indictment,” depending on whether the statutory provision in question applies to an indicted defendant.¹⁷

Appellate Jurisdiction

Code of Civil Procedure Sections 904.1 and 904.2 govern appellate jurisdiction in a civil case.¹⁸ Section 904.1 still contains a provision that refers to the municipal court in several places:

904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except ... (C) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a *municipal court* or the superior court in a county in which there is no *municipal court* or the judge or judges thereof that relates to a matter pending in the *municipal* or superior court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

....¹⁹

This provision was added by the Legislature in slightly different form in 1982, in response to a perceived problem. At the time, there were three different kinds of trial courts: superior court, municipal courts, and justice courts. The perceived problem related to judicial review of a pretrial ruling made by a municipal or justice court.

Judicial Review of a Pretrial Ruling Made by a Municipal or Justice Court

Before the Legislature added the provision in question, if a litigant disagreed with a pretrial ruling made by a municipal or justice court, and did not want to wait until after entry of judgment to challenge the ruling, the litigant could seek an extraordinary writ from the superior court. Depending on the circumstances, the litigant could seek a writ of certiorari (also known as a writ of review),²⁰ a writ of

17. See proposed amendments to Penal Code Sections 977 and 977.2 *infra*.

Section 977(c) is expressly inapplicable to a defendant who is indicted by a grand jury. Consequently, in that provision the phrase “initial hearing in superior court in a felony case” could only have been meant to refer to an arraignment on an information. The provision should be amended accordingly.

In contrast, Section 977.2 contains no exception for an indicted defendant. In that context, the phrase “initial hearing in superior court in a felony case” was meant to include both an arraignment on an indictment and an arraignment on an information. The provision should be amended to refer to both of these types of arraignment.

18. Code Civ. Proc. §§ 904.1, 904.2.

19. Emphasis added.

20. A writ of certiorari is a means of reviewing judicial action when no other means of review is available. B. Witkin, California Procedure *Extraordinary Writs* § 4, at 784-85 (4th ed. 1997). A writ of certiorari “may be granted by any court when an inferior tribunal, board, or officer, exercising judicial

mandamus (also known as a writ of mandate),²¹ a writ of prohibition,²² or some combination of these extraordinary writs.

The superior court would rule on the writ petition in much the same manner that courts handle writs today.²³ Regardless of whether the superior court granted or denied the writ, its decision on whether to issue the writ was appealable to the appropriate court of appeal.²⁴ Because the decision was appealable, review by the court of appeal on the merits was mandatory, not discretionary as in a writ proceeding.

Criticism of the Review Process

Courts and others criticized this process for reviewing a prejudgment ruling made by a municipal or justice court. In particular, an appellate court observed that the process was inequitable. While a municipal or justice court litigant was *entitled* to have a court of appeal consider the propriety of writ relief with regard to a prejudgment ruling, a superior court litigant who disagreed with a pretrial ruling could only ask a court of appeal to *exercise its discretion* to review the

functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.” Code Civ. Proc. § 1068(a). “Certiorari in purpose and effect is quite similar to appeal.” B. Witkin, *supra*, *Extraordinary Writs* § 11, at 791.

21. A writ of mandamus is a “broad remedy to compel performance of a ministerial duty or to restore rights and privileges of a public or private office.” B. Witkin, *supra* note 20, *Extraordinary Writs* § 6, at 785. It “may be issued by any court to any inferior tribunal, corporation, board, or person, *to compel the performance of an act* which the law specially enjoins, as a duty resulting from an office, trust, or station, or to *compel the admission of a party to the use and enjoyment of a right or office* to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person.” Code Civ. Proc. § 1085(a) (emphasis added).

22. A writ of prohibition is a “writ to *restrain* judicial action in excess of jurisdiction where there is no other adequate remedy.” B. Witkin, *supra* note 20, *Extraordinary Writs* § 5, at 785 (emphasis in original). The writ “arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.” Code Civ. Proc. § 1102. It “may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law.” Code Civ. Proc. § 1103(a).

23. A writ proceeding is initiated by filing a petition seeking a particular writ. The court in which the petition is filed may summarily deny the writ, without considering the merits. Alternatively, the court may issue an order to show cause (often in the form of an alternative writ, which essentially directs the respondent to do what is sought by the petition and/or show cause why the respondent should not have to do so). If the court issues an order to show cause, the matter is fully briefed by the parties and decided by the court on the merits, either by granting the relief requested in the petition or by denying such relief. In rare instances, the court proceeds directly to a determination on the merits, without issuing an order to show cause. See B. Witkin, *supra* note 20, *Extraordinary Writs* § 159, at 959-60, § 182, at 978, § 186, at 981; *Appeals and Writs in Criminal Cases Writs in State Courts* §§ 2.121-2.134, at 461-475 (CEB 2006).

24. See, e.g., *Gilbert v. Municipal Court*, 73 Cal. App. 3d 723, 140 Cal. Rptr. 897 (1977); *Burrus v. Municipal Court*, 36 Cal. App. 3d 233, 111 Cal. Rptr. 539 (1973).

1 ruling before entry of judgment.²⁵ Courts also pointed out that allowing a
2 municipal or justice court litigant to appeal in these circumstances was a waste of
3 appellate court resources,²⁶ could lead to undue delay in resolving litigation,²⁷
4 unnecessarily increased litigation expenses,²⁸ and might result in procedural
5 complications.²⁹ The courts urged the Legislature to address the situation.³⁰

6 **1982 Legislation**

7 In 1982, the Legislature amended Code of Civil Procedure Section 904.1 to
8 preclude an appeal from a superior court order granting or denying a writ of
9 mandamus or prohibition directed to a municipal or justice court.³¹ As amended,
10 the key portion of the statute read:

11 904.1. An appeal may be taken from a superior court in the following cases:

12 (a) From a judgment, except ... (4) a judgment granting or denying a petition for
13 issuance of a writ of mandamus or prohibition directed to a municipal court or a
14 justice court or the judge or judges thereof which relates to a matter pending in
15 the municipal or justice court. However, an appellate court may, in its discretion,
16 review a judgment granting or denying a petition for issuance of a writ of
17 mandamus or prohibition upon petition for an extraordinary writ.

25. See *Gilbert*, 73 Cal. App. 3d at 728-29. The appellate court found this difference in treatment “puzzling, to say the least.” *Id.* at 729. Because more was at stake in a superior court case than in a municipal or justice court case, the court maintained that a superior court litigant ought to have a greater, or at least equal, opportunity for review as compared to a municipal or justice court litigant. *Id.*

26. In *Burrus*, 36 Cal. App. 3d at 238, the court explained:

The policy expressed in the Constitution ... is that litigation arising in municipal and justice courts will not go beyond the superior court except under very limited circumstances. This is desirable both to relieve the burden on the higher courts and to spare litigants the delay and expense which would result from successive appeals through all levels of review.

The court observed that these policy objectives were not served by the practice of allowing a municipal or justice court litigant to appeal from a superior court decision on issuance of an extraordinary writ. *Id.* at 238-39.

Similarly, in *Gilbert*, 73 Cal. App. 3d at 733-34, the court wrote:

In our search for perfect justice we have become review happy. Still there must be realistic limitations. Currently, the justices of the Courts of Appeal, together with their attorneys and other staff, are grinding out over six thousand opinions a year. The judicial fabric is stretched thin. It would appear only reasonable that the Courts of Appeal should not be called upon to automatically review pretrial orders from justice and municipal courts.

27. *Gilbert*, 73 Cal. App. 3d at 732; *Burrus*, 36 Cal. App. 3d at 237-238.

28. *Burrus*, 36 Cal. App. 3d at 238.

29. *Gilbert*, 73 Cal. App. 3d at 731-32.

30. *Gilbert*, 73 Cal. App. 3d at 734; see also *Burrus*, 36 Cal. App. 3d at 237-238.

31. 1982 Cal. Stat. ch. 1198, § 63.2.

Several years earlier, the Judicial Council issued a report recommending that Section 904.1 be amended to preclude an appeal from a superior court decision granting or denying a petition for a writ of mandamus or a writ of prohibition. *Gilbert*, 73 Cal. App. 3d at 730 & n.2. A bill along those lines was introduced in the Legislature in 1976, but the bill died in committee. *Id.* at 730.

....³²

With some modifications, this provision eventually became subdivision (a)(1)(C), the provision that still needs to be revised to reflect the elimination of the municipal courts.³³

As added in 1982 and as it still exists today, this provision refers only to a writ of mandamus or a writ of prohibition; it does not apply to a writ of certiorari.³⁴ Although located in the Code of Civil Procedure in a statute governing civil appeals,³⁵ the provision has been repeatedly applied not only in the civil context, but also when a party to a misdemeanor case sought a petition for a writ of mandamus or prohibition.³⁶

Preserving the Intent of the 1982 Legislation

The Law Revision Commission recommends several statutory reforms to preserve the intended effect of the 1982 amendment now that the municipal courts have been eliminated through unification.

First, subdivision (a)(1)(C) should be deleted from Section 904.1.³⁷ The provision no longer fits there because it was meant to apply to issuance of a writ in the types of cases that used to be adjudicated in the municipal and justice courts — i.e., misdemeanor and infraction cases and what are now known as limited civil

32. 1982 Cal. Stat. ch. 1198, § 63.2.

33. In 1989, Section 904.1 was amended to add subdivision (k), which allowed an appeal from a superior court order requiring payment of sanctions over \$750. The new subdivision expressly stated that “[l]esser sanction judgments against a party or an attorney for a party may be reviewed on appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.” See 1989 Cal. Stat. ch. 1416, § 25. Nonetheless, the last sentence of the portion of Section 904.1(a)(4) was also amended, to emphasize that “an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.” *Id.*

In 1993, Section 904.1(a)(4) was relabeled as Section 904.1(a)(1)(D). See 1993 Cal. Stat. ch. 456, § 12. Soon afterwards, justice courts were eliminated. See 1994 Cal. Stat. res. ch. 113, approved by the voters Nov. 8, 1994 (Proposition 191).

In 1998, Section 904.1 was amended to accommodate trial court unification and reflect the elimination of the justice court. 1998 Cal. Stat. ch. 931, § 100. Instead of specifying when an appeal can be taken from a superior court, the statute now states when an appeal can be taken “other than in a limited civil case.” The statute also makes clear that “[a]n appeal, other than in a limited civil case, is to the court of appeal.” The substance of former Section 904.1(a)(1)(D), as revised to accommodate unification, became what is now Section 904.1(a)(1)(C).

34. *Bermudez v. Municipal Court*, 1 Cal. 4th 855, 823 P.2d 1210, 4 Cal. Rptr. 2d 609 (1992).

35. See Code Civ. Proc. § 904.

36. See *Baluyut v. Superior Court*, 12 Cal. 4th 826, 829 n.3, 911 P.2d 1, 50 Cal. Rptr. 2d 101 (1996); *Serna v. Superior Court*, 40 Cal. 3d 239, 245-46 & n.2, 707 P.2d 793, 219 Cal. Rptr. 420 (1985); see also *Bermudez*, 1 Cal. 4th at 863.

37. See proposed amendment to Code of Civil Procedure Section 904.1 *infra*.

1 cases.³⁸ In contrast, Section 904.1 currently applies to an appeal “other than in a
2 limited civil case.”

3 Second, a new provision should be added to the codes to preserve the intended
4 effect of what is now subdivision (a)(1)(C). The original intent of that statutory
5 material was to preclude an appeal of a superior court order granting or denying a
6 petition for a writ of mandamus or prohibition directed to a municipal or justice
7 court.

8 In a unified court system, cases that used to be adjudicated in municipal or
9 justice court are now adjudicated in superior court. If a litigant disagrees with a
10 ruling made by a superior court in a limited civil case or a misdemeanor or
11 infraction case, and the litigant wants the ruling reviewed before entry of
12 judgment, the litigant can seek a writ from the appellate division of the superior
13 court.³⁹ Thus, to preserve the intended effect of Section 904.1(a)(1)(C), the new
14 provision should preclude an appeal from a judgment of the appellate division of a
15 superior court granting or denying a petition for a writ of mandamus or prohibition
16 in a limited civil case or a misdemeanor or infraction case.⁴⁰

17 The Law Revision Commission tentatively recommends that this new provision
18 be located in the Code of Civil Procedure, like the provision it would replace.⁴¹
19 The Commission further recommends that the new provision expressly refer to a
20 writ petition relating to a misdemeanor or infraction case, not just a writ petition
21 relating to a limited civil case. **The Commission is particularly interested in
22 comments on whether it is a good idea to expressly refer to a writ petition
23 relating to a misdemeanor or infraction case. The Commission is also
24 particularly interested in comments on whether there should be two new
25 provisions instead of only one: a provision in the Code of Civil Procedure that**

38. See Cal. Const. art. VI, § 10; Code Civ. Proc. § 85 & Comment; Penal Code § 19.7; *Revision of Codes*, *supra* note 5, at 64-65, 66-67.

39. See Cal. Const. art. VI, § 10; Code Civ. Proc. §§ 1068(b), 1085(b), 1103(b) & Comments.

40. The Law Revision Commission considered the possibility of also precluding an appeal from a judgment of the appellate division of a superior court granting or denying a petition for a writ of certiorari in a limited civil case or a misdemeanor or infraction case. The Commission rejected that approach because (1) it would go beyond merely adjusting the codes to reflect trial court unification, and (2) it might be challenged as unconstitutional under Article VI, Section 11, of the California Constitution (Except in death penalty cases, “courts of appeal have appellate jurisdiction when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute.”).

41. See proposed Code of Civil Procedure Section 904.3 *infra*.

Currently, there is no Section 904.3 in the Code of Civil Procedure, so that number is available for use. In the past, there was a Section 904.3, which related to an appeal from a justice court. That provision was repealed in 1976 (see 1976 Cal. Stat. ch. 1288, § 13), but some cross-references to it remain in the codes. The Law Revision Commission recommends that these obsolete cross-references be eliminated. See proposed amendments to Code of Civil Procedure Sections 399 and 586 *infra*; see also Tentative Recommendation on *Technical and Minor Substantive Statutory Corrections*, at 1-2 & n.2, 20 (April 2006) (proposed amendment to Code Civ. Proc. § 904).

1 **pertains to a writ petition in a limited civil case, and a provision in the Penal**
2 **Code that pertains to a writ petition in a misdemeanor or infraction case.**

3 In addition to deleting subdivision (a)(1)(C) from Section 904.1 and continuing
4 its substance in a new provision (with modifications to reflect trial court
5 unification), the Law Revision Commission recommends one further reform to
6 provide clarity in this procedural area. Specifically, Code of Civil Procedure
7 Section 904.2 states that “an appeal in a limited civil case is to the appellate
8 division of the superior court.” The statute also lists circumstances in which an
9 appeal may be taken in a limited civil case.

10 Section 904.2 is intended to govern the appealability of a ruling *by a superior*
11 *court judge or other judicial officer* in a limited civil case. In contrast, the
12 recommended new provision replacing Section 904.1(a)(1)(C) would govern the
13 appealability of a judgment *by the appellate division of the superior court on a*
14 *writ petition* in a limited civil case.

15 The Law Revision Commission recommends that Section 904.2 be amended to
16 emphasize this difference in coverage.⁴² In conjunction with the two other
17 recommended reforms, such an amendment would faithfully preserve the
18 legislative policy underlying Section 904.1(a)(1)(C).

19 **Writ Jurisdiction in a Small Claims Case**

20 The Law Revision Commission recommends several statutory reforms to clarify
21 the proper treatment of a writ petition relating to a small claims case after trial
22 court unification. These reforms pertain to (1) the writ jurisdiction of the appellate
23 division of the superior court, (2) the proper tribunal for a writ petition relating to
24 a ruling by the small claims division, and (3) the proper tribunal for a writ petition
25 relating to a postjudgment enforcement order in a small claims case.

26 ***Writ Jurisdiction of the Appellate Division***

27 Code of Civil Procedure Section 1068 authorizes a court, in specified
28 circumstances, to issue a writ of certiorari to an “inferior tribunal, board, or
29 officer.” Code of Civil Procedure Sections 1085 and 1103 are similar provisions
30 relating to a writ of mandamus and a writ of prohibition.

31 To accommodate trial court unification, Section 1068 was amended in 1998 and
32 1999 to add subdivision (b), concerning issuance of a writ of certiorari by the
33 appellate division of the superior court:

34 (b) The appellate division of the superior court may grant a writ of review
35 directed to the superior court in a limited civil case or in a misdemeanor or
36 infraction case. Where the appellate division grants a writ of review directed to
37 the superior court, the superior court is an inferior tribunal for purposes of this
38 chapter.

42. See proposed amendment to Code of Civil Procedure Section 904.2 *infra*.

1 Similar changes were made in Sections 1085 and 1103. These changes served to
2 implement Article VI, Section 10, of the California Constitution, which, as
3 amended to accommodate unification, mandates that “[t]he appellate division of
4 the superior court has original jurisdiction in proceedings for extraordinary relief
5 in the nature of mandamus, certiorari, and prohibition directed to the superior
6 court in causes subject to its appellate jurisdiction.”

7 In combination, newly added Sections 1068(b), 1085(b), and 1103(b) say that
8 the appellate division of the superior court may grant a writ of certiorari,
9 mandamus, or prohibition in a limited civil case. Although this is correct as a
10 general rule, the provisions might create some confusion with regard to a small
11 claims case.

12 A small claims case is a type of limited civil case.⁴³ But if “a statute or rule
13 applicable to a small claims case conflicts with a statute or rule applicable to a
14 limited civil case, the statute or rule applicable to a small claims case governs the
15 small claims case and the statute or rule applicable to a limited civil cases does
16 not.”⁴⁴

17 A small claims plaintiff has no right to appeal an adverse judgment.⁴⁵ A small
18 claims defendant does have a right to appeal an adverse judgment. But the appeal
19 is not to the appellate division of the superior court. Instead, the appeal consists of
20 a new hearing before a judicial officer who heard the action in the small claims
21 division.⁴⁶

22 Thus, the appellate division of the superior court does not have jurisdiction of a
23 small claims appeal. Under Article VI, Section 10, of the California Constitution,
24 it follows that the appellate division does not have original jurisdiction of a
25 petition for an extraordinary writ seeking to overturn a judgment or prejudgment
26 ruling entered by the small claims court.

27 This limitation on the jurisdiction of the appellate division is already implicit in
28 Code of Civil Procedure Sections 1068, 1085, and 1103, which must be
29 harmonized with constitutional constraints. To prevent confusion in small claims
30 cases, however, the Law Revision Commission recommends that those provisions
31 be revised to make explicit that the appellate division only has jurisdiction of a
32 writ petition in a cause that is subject to its appellate jurisdiction.⁴⁷

33 ***Proper Tribunal for a Writ Petition Relating to a Ruling of a Small Claims Division***

34 A litigant sometimes seeks an extraordinary writ with respect to a decision made
35 by a small claims court. For example, in a damage action a small claims court

43. General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court of Los Angeles County, 88 Cal. App. 4th 136, 138, 105 Cal. Rptr. 2d 552 (2001).

44. Code Civ. Proc. § 87.

45. Code Civ. Proc. § 116.710.

46. Code Civ. Proc. § 116.770(a).

47. See proposed amendments to Code of Civil Procedure Sections 1068, 1085, and 1103 *infra*.

1 judge refused to appoint an interpreter at public expense for indigent defendants
 2 who did not understand English. The defendants sought and obtained a writ of
 3 mandamus from the superior court, which was affirmed with modifications by the
 4 court of appeal.⁴⁸ In another case, 183 individuals brought separate nuisance
 5 claims in small claims court against a city that operated an airport. The claims
 6 were consolidated and set for hearing in the small claims court, but the hearing
 7 was postponed when the city sought a writ of mandamus or prohibition in the
 8 superior court. The superior court denied the writ on the merits and the court of
 9 appeal affirmed.⁴⁹

10 Before unification, a small claims litigant could seek such a writ from a judge of
 11 the superior court (not the appellate department of the superior court).⁵⁰ Such a
 12 writ could also be sought in the courts of appeal or the California Supreme Court,
 13 where necessary to “secure uniformity in the operations of the small claims courts
 14 and uniform interpretation of the statutes governing them.”⁵¹

15 In a unified court system, it seems clear that the superior court, courts of appeal,
 16 and the California Supreme Court continue to have original jurisdiction of a writ
 17 petition challenging a ruling in a small claims case.⁵² But a superior court judge
 18 should not review the judge’s own decisions. The transitional provision
 19 implementing trial court unification recognizes this: It provides that upon
 20 unification “[m]atters of a type previously subject to rehearing by a superior court
 21 judge remain subject to rehearing by a superior court judge, *other than the judge*

48. *Gardiana v. Small Claims Court for the San Leandro-Hayward Judicial District of Alameda County*, 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976).

49. *City and County of San Francisco v. Small Claims Court for the Northern Judicial District of San Mateo County*, 141 Cal. App. 3d 470, 190 Cal. Rptr. 340 (1983).

50. See, e.g., *City and County of San Francisco*, 141 Cal. App. 3d 470; *Gardiana*, 59 Cal. App. 3d 412.

51. *Davis v. Superior Court*, 102 Cal. App. 3d 164, 168, 162 Cal. Rptr. 167 (1980); see also *Houghtaling v. Superior Court*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993).

52. See Cal. Const. art. VI, § 10. It is debatable, however, whether a small claims plaintiff may seek a writ to overturn a small claims judgment. In *Parada v. Small Claims Court*, 70 Cal. App. 3d 766, 769, 139 Cal. Rptr. 87 (1977), the court of appeal interpreted the version of the Small Claims Act then in effect. It concluded that

a plaintiff who elects to proceed in the small claims court is finally bound by an adverse judgment. This means that the lack of the right of appeal cannot then be relied upon as a basis for a petition for an extraordinary writ which is designed to seek appellate review of an adverse judgment. Such a procedure would emasculate the prohibition against appeals by plaintiffs from judgments rendered by a small claims court.

The decision was by a 2-1 vote; one justice maintained that a plaintiff should be able to seek an extraordinary writ. Subsequent cases have not definitively resolved this point. See generally *Pitzen v. Superior Court*, 120 Cal. App. 4th 1374, 1380, 16 Cal. Rptr. 3d 628 (2004) (dictum discussing *Parada* with apparent approval); *Houghtaling*, 17 Cal. App. 4th 1128, 1131, 21 Cal. Rptr. 2d 855 (1993) (granting writ relief to small claims plaintiff who won in small claims division but lost at trial de novo). The legislation recommended in this tentative recommendation is not intended to change the current state of the law on the point.

1 *who originally heard the matter.*⁵³ Similarly, the Small Claims Act currently
2 provides that a small claims appeal “shall consist of a new hearing before a
3 judicial officer *other than the judicial officer who heard the action in the small*
4 *claims division.*”

5 The Law Revision Commission recommends that a new provision with similar
6 statutory language be added to the Code of Civil Procedure with regard to each of
7 the three types of extraordinary writ. The new provisions would make clear that
8 when a writ petition is brought in superior court challenging a ruling in a small
9 claims case, the petition can only be considered by a judicial officer of the
10 superior court other than the one who made the challenged ruling.⁵⁴

11 In addition to providing clarity regarding the proper method of review in the
12 superior court, such a provision might also be necessary to ensure that the superior
13 court retains authority to consider a writ petition relating to a ruling of the small
14 claims division. There is case law indicating that a superior court judge cannot
15 constitutionally enjoin, restrain, or otherwise interfere with a judicial act of
16 another superior court judge.⁵⁵ The California Supreme Court recently explained,
17 however, that a superior court judge who considers an order entered earlier by
18 another superior court judge does not enjoin, restrain, or otherwise interfere with
19 the judicial act of another superior court judge *when the later judge acts under*
20 *statutory authority.*⁵⁶ The recommended new provisions would constitute the
21 necessary statutory authority for a superior court judicial officer to consider a writ
22 petition challenging a ruling made in the small claims division by another superior
23 court judicial officer.

24 ***Proper Tribunal for a Writ Petition Relating to a Postjudgment Enforcement Order in a Small***
25 ***Claims Case***

26 A postjudgment enforcement order of a small claims court requires different
27 treatment with respect to writ jurisdiction than other rulings of the small claims
28 court.⁵⁷ There are no special statutes or rules governing enforcement of a small
29 claims judgment; a small claims judgment is to be enforced in the same manner as

53. Cal. Const. art. VI, § 23 (emphasis added).

54. See proposed Code of Civil Procedure Sections 1068.5, 1085.3, and 1103.5 *infra*.

55. See, e.g., *Ford v. Superior Court*, 188 Cal. App. 3d 737, 742, 233 Cal. Rptr. 607 (1986).

56. *People v. Konow*, 32 Cal. 4th 995, 1019-21, 88 P.3d 36, 12 Cal. Rptr. 3d 301 (2004). The Court announced this principle when considering whether a superior court, in ruling on a motion by a criminal defendant to set aside an information under Penal Code Section 995, is authorized to review a prior order of a superior court magistrate to reinstate the complaint under Penal Code Section 871.5. *Id.* at 1001. The Court concluded that “in ruling on a motion to set aside an information under section 995, the superior court is authorized to review a prior order compelling the magistrate to reinstate the complaint under section 871.5, and may do so without violating the California Constitution.” *Id.* at 1021.

57. A postjudgment enforcement order is an order that is made after entry of judgment in a case and resolves issues relating to enforcement of the judgment.

1 other judgments.⁵⁸ In particular, because there are no special statutes or rules
2 concerning an appeal of a postjudgment enforcement order in a small claims case,
3 the statutes concerning an appeal of a postjudgment enforcement order in a limited
4 civil case apply.⁵⁹ Those statutes expressly provide that *the appellate division of*
5 *the superior court* has jurisdiction of an appeal from a postjudgment enforcement
6 order in a limited civil case.⁶⁰

7 The extraordinary writ jurisdiction of the appellate division tracks its appellate
8 jurisdiction.⁶¹ Consequently, *the appellate division* has extraordinary writ
9 jurisdiction of a postjudgment enforcement order in a small claims case.⁶² This
10 parallels the pre-unification situation, in which a postjudgment enforcement order
11 in a small claims case was reviewed by the appellate department of the superior
12 court.⁶³

13 The Law Revision Commission recommends that the codes be revised to clearly
14 reflect the distinction in treatment between a writ petition relating to a
15 postjudgment enforcement order and a writ petition relating to another type of
16 ruling in a small claims case. That could be accomplished by adding appropriate
17 language to the same new provisions that would address writ jurisdiction with
18 respect to other types of rulings in a small claims case.⁶⁴

19 **Concurrent Jurisdiction**

20 In previous work on trial court restructuring, the Law Revision Commission
21 identified a number of provisions that could, but need not necessarily, be
22 construed to confer concurrent jurisdiction on the municipal and superior courts.
23 Put differently, these provisions conceivably could be interpreted such that a
24 litigant would have a choice of whether to pursue a particular claim in municipal
25 court or in superior court. The Commission did not revise the provisions at that
26 time, because they required extra study to ensure that they were properly adjusted
27 to account for trial court unification.

28 The Commission has since examined each provision and its context, determined
29 the probable intent, and tentatively determined how to revise each provision to
30 faithfully preserve that intent in a unified court system. In reaching its conclusions,

58. Code Civ. Proc. § 116.820.

59. *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court of Los Angeles County*, 88 Cal. App. 4th 136, 144, 105 Cal. Rptr. 2d 552 (2001); see Code Civ. Proc. § 87.

60. *General Electric Capital*, 88 Cal. App. 4th at 144; see Code Civ. Proc. § 904.2.

61. Cal. Const. art. VI, § 10 (“The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.”)

62. *General Electric Capital*, 88 Cal. App. 4th at 145.

63. *Id.*

64. See proposed Code of Civil Procedure Sections 1068.5, 1085.3, and 1103.5 *infra*.

1 the Commission relied on basic principles governing distinctions between
2 different categories of civil cases.

3 *Distinctions Between Different Categories of Civil Cases*

4 Before trial court unification, the superior courts had jurisdiction in “all causes
5 except those given by statute to other trial courts.”⁶⁵ By statute, a municipal court
6 had jurisdiction in all cases at law in which the demand, exclusive of interest, or
7 value of the property in controversy was \$25,000 or less, except certain tax
8 cases.⁶⁶ Under various different statutes, a municipal court also had jurisdiction in
9 certain other types of cases.

10 A municipal court was statutorily authorized to issue a preliminary injunction or
11 temporary restraining order where necessary to preserve the property or rights of a
12 party to an action within the court’s jurisdiction.⁶⁷ As a general rule, however, a
13 municipal court lacked authority to enter a permanent injunction, determine title to
14 real property, or grant declaratory relief.⁶⁸

15 With limited exceptions, a civil case in municipal court was subject to economic
16 litigation procedures.⁶⁹ An appeal from a municipal court judgment was to the
17 superior court, not to the court of appeal.⁷⁰ In contrast, a civil case in superior
18 court was subject to normal discovery and litigation procedures, not economic
19 litigation procedures. An appeal from a superior court judgment was to the court
20 of appeal.⁷¹

21 To accommodate trial court unification, the codes were revised on Commission
22 recommendation to differentiate between limited civil cases and unlimited civil
23 cases. A limited civil case is a case formerly within the jurisdiction of the
24 municipal court; it is treated the same way as a municipal court case.⁷² An
25 unlimited civil case is a case that would have been within the jurisdiction of the
26 superior court before trial court unification; it is treated the same way as a
27 traditional superior court case.⁷³

28 Code of Civil Procedure Section 85 is the key provision on what constitutes a
29 limited civil case. It establishes three requirements for a limited civil case:

65. Former Cal. Const. art. VI, § 10.

66. Former Code Civ. Proc. § 86(a)(1).

67. Former Code Civ. Proc. § 86(a)(8).

68. See Section 580 Comment & authorities cited.

69. Former Code Civ. Proc. § 91.

70. Former Cal. Const. art. VI, § 11.

71. *Id.*

72. See *Revision of Codes*, *supra* note 5, at 64.

73. See *id.*; see also Code Civ. Proc. § 88.

- 1 (1) **The amount in controversy cannot exceed \$25,000.** This requirement
2 essentially preserves the \$25,000 amount in controversy limit that applied to
3 municipal court.⁷⁴
- 4 (2) **The relief sought must be of a type that can be granted in a limited civil**
5 **case.** A separate provision, Code of Civil Procedure Section 580, states that
6 certain types of relief cannot be granted in a limited civil case: relief
7 exceeding the amount in controversy limit for a limited civil case, a
8 permanent injunction, a determination of title to real property, and most
9 declaratory relief.⁷⁵ Together, Sections 85 and 580 preserve traditional
10 limitations on the types of relief available in municipal court.
- 11 (3) **The type of relief sought must be described in a statute that either (i)**
12 **classifies a matter as a limited civil case or (ii) provides that a matter is**
13 **within the original jurisdiction of the municipal court.** Among such
14 statutes is a provision establishing a general rule that a case at law is a
15 limited civil case if the demand or the value of the property in controversy is
16 \$25,000 or less.⁷⁶

17 Like a municipal court case, a limited civil case is generally subject to economic
18 litigation procedures.⁷⁷ Similarly, an appeal from a judgment in a limited civil case
19 is to the appellate division of the superior court, not to the court of appeal.⁷⁸ In
20 contrast, an unlimited civil case is subject to normal discovery and litigation
21 procedures, not economic litigation procedures. An appeal from a judgment in an
22 unlimited civil case is to the court of appeal.⁷⁹

23 *Provisions That Only Require Deletion of Municipal Court References*

24 Some of the provisions that might be construed to confer concurrent jurisdiction
25 can be adjusted for unification simply by deleting the municipal court references.
26 For example, Business and Professions Code Section 6455 is in a chapter
27 governing qualifications, duties, and conduct of a paralegal. The provision states
28 that “[a]ny consumer injured by a violation of this chapter may file a complaint
29 and seek redress in *any municipal or superior court* for injunctive relief,
30 restitution, and damages.”⁸⁰

31 The phrase “any municipal or superior court” is unclear. It could be interpreted
32 to allow a plaintiff to select any municipal or superior court as a forum for a claim
33 under the chapter, regardless of the nature of the claim. Alternatively, it could be

74. See Code Civ. Proc. § 85 Comment.

75. Section 580 was amended by 2006 Cal. Stat. ch. 86. The new version will become operative January 1, 2007. The new version is used in this recommendation.

76. Code Civ. Proc. § 86(a)(1).

77. Code Civ. Proc. § 91.

78. Cal. Const. art. VI, § 11; Code Civ. Proc. § 904.2.

79. *Id.*

80. Emphasis added.

1 interpreted to allow a plaintiff to select any municipal court for a claim under the
2 chapter that is within the jurisdictional requirements of the municipal court, and
3 any superior court for a claim under the chapter that is within the jurisdictional
4 requirements of the superior court.

5 The latter interpretation is more probable. It is unlikely that before unification
6 the Legislature intended to allow a claimant to sue a paralegal for a small sum
7 (\$25,000 or less) in superior court, or to allow a claimant to sue a paralegal for a
8 large sum (more than \$25,000) or permanent injunctive relief in municipal court.

9 Accordingly, all that needs to be done now is to delete the reference to
10 municipal court. There is no need to add new language clarifying whether a claim
11 under the chapter is to be treated as a limited civil case. The proper jurisdictional
12 classification, and thus the proper appeal path and procedural rules, will be
13 determined by the general rules in Code of Civil Procedure Sections 85 and 580,
14 and by provisions referenced in Section 85.⁸¹

15 A similar analysis applies to Government Code Sections 12965 and 12980,
16 which relate to unlawful employment practices and housing discrimination,
17 respectively. The Law Revision Commission recommends that all three provisions
18 be revised to delete the municipal court references.⁸²

19 *Provisions That Require Addition of Language Regarding Jurisdictional Classification*

20 Other provisions that might be construed to confer concurrent jurisdiction
21 cannot be adjusted for unification simply by deleting the municipal court
22 references. It is also necessary to add language specifying the proper jurisdictional
23 classification of a proceeding under the provision.

24 For example, Business and Professions Code Section 12606 prohibits
25 misleading packaging of commodities. Subdivision (c) provides:

26 (c) Any sealer may seize a container that facilitates the perpetration of
27 deception or fraud and the contents of the container.

28 By order of the *municipal or superior court* of the city or county within which a
29 violation of this section occurs, the containers seized shall be condemned and
30 destroyed or released upon such conditions as the court may impose to insure
31 against their use in violation of this chapter. The contents of any condemned
32 container shall be returned to the owner thereof if the owner furnishes proper
33 facilities for the return.⁸³

34 Here, there seems to be clear legislative intent to allow a municipal court to
35 order that noncomplying containers “be condemned and destroyed or released
36 upon such conditions as the court may impose to insure against their use in

81. E.g., Code of Civil Procedure Section 86(a)(1), which classifies a damage claim as a limited civil case if the demand or the value of the property in controversy is \$25,000 or less.

82. See proposed amendments to Business and Professions Code Section 6455 and Government Code Sections 12965 and 12980 *infra*.

83. Emphasis added.

violation of this chapter.” It is possible that this would be considered a deviation from the general rule that a municipal court could not issue a permanent injunction. Presumably, the intent was to give a municipal court such authority only with regard to noncomplying containers with a value of \$25,000 or less.

To faithfully preserve this scheme post-unification, it appears necessary not only to delete the municipal court reference, but also to add language specifying the proper jurisdictional classification of a proceeding under the provision. The Law Revision Commission recommends adding a sentence stating that “[a] proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.”⁸⁴ It also appears advisable to amend Code of Civil Procedure Section 580 to make clear that it does not preclude a proceeding under Section 12606 from being treated as a limited civil case.⁸⁵

Several other provisions are similar to Business and Professions Code Section 12606 in their apparent intent.⁸⁶ They should be amended in the same manner.⁸⁷

Code of Civil Procedure Section 688.010

Code of Civil Procedure Section 688.010 governs jurisdiction to enforce a state tax liability pursuant to a warrant or a notice of levy. Unlike the other provisions, this provision unambiguously provides for municipal court jurisdiction in circumstances in which the superior court also has jurisdiction:

688.010. For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, regardless of whether the municipal court also has jurisdiction under subdivision (b).

(b) The municipal court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.⁸⁸

The provision was originally enacted in 1982, as part of the Enforcement of Judgments Law, a comprehensive reform recommended by the Law Revision Commission.⁸⁹ The Commission’s recommendation explains that under the law existing at the time of enactment, the superior court had jurisdiction when judicial

84. See proposed amendment to Business and Professions Code Section 12606 *infra*.

85. See proposed amendment to Code of Civil Procedure Section 580 *infra*.

86. See Bus. & Prof. Code § 12606.2; Food & Agric. Code §§ 25564, 29733, 43039, 59289.

87. See proposed amendments to Business and Professions Code Section 12606.2 and Food and Agricultural Code Sections 25564, 29733, 43039, and 59289 *infra*.

88. Emphasis added.

89. 1982 Cal. Stat. ch. 1364; see *Recommendation Relating to Enforcement of Judgments Law*, 16 Cal. L. Revision Comm’n Reports 2001 (1980). Section 688.010 was amended in 1998 to delete an obsolete reference to justice court. Other than that, the provision has not been changed since it was first enacted.

1 proceedings were required for enforcement of a tax liability.⁹⁰ The
2 recommendation further explains that Section 688.010 “continues the provision for
3 superior court jurisdiction and adds concurrent jurisdiction in the municipal or
4 justice court when the amount of the tax claim being enforced is within the
5 jurisdictional limits of the municipal or justice court and the legality of the tax
6 liability is not contested.”⁹¹

7 Each of the provisions superseded by Section 688.010 expressly provided for
8 superior court jurisdiction of specified proceedings to enforce state tax liability.⁹²
9 At the same time, Code of Civil Procedure Section 86(a)(1) gave the municipal
10 and justice courts jurisdiction of civil cases at law where the amount in
11 controversy was \$5,000 or less, “except cases which involve the legality of any
12 tax, impost, assessment, toll, or municipal fine, except such courts shall have
13 jurisdiction in actions to enforce payment of delinquent unsecured personal
14 property taxes if the legality of the tax is not contested by the defendant.”⁹³

15 Then-existing Section 86(a)(1) reflected a legislative determination that
16 municipal courts were competent to resolve a tax claim, at least one involving
17 delinquent unsecured personal property taxes, so long as the claim was within the
18 court’s jurisdictional limit and there is no dispute relating to the legality of the tax.
19 Section 688.010 reinforced and expanded the scope of that policy determination;
20 the provision gives a municipal court jurisdiction of any claim relating to
21 enforcement of a state tax liability by a warrant or a notice of levy, so long as the
22 claim is within the court’s jurisdictional limit and the legality of the tax liability is
23 uncontested. By providing for concurrent municipal and superior court
24 jurisdiction, the statute afforded leeway to adjudicate a claim in superior court
25 together with related claims, even when liability was uncontested and the claim
26 could have been handled in municipal court.

27 In a unified court system, the superior court hears all types of civil cases, both
28 traditional superior court cases (now known as unlimited civil cases) and
29 traditional municipal court cases (now known as limited civil cases). Thus,
30 regardless of whether a tax enforcement case is classified as limited or unlimited,
31 it will be heard by the same court as a related case, so long as both cases are
32 brought in the same county.

90. *Enforcement of Judgments Law*, *supra* note 88, at 1153; see also Code Civ. Proc. § 688.010 Comment; former Code Civ. Proc. §§ 689d, 690.51, 722.5.

91. *Id.* The Commission’s recommendation and Comment to Section 688.010 are entitled to substantial weight in construing the legislation. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 11 P.3d 954, 28 Cal. Rptr. 3d 685 (2005); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 143 Cal. Rptr. 717 (1978); *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 36 (2005); *2005-2006 Annual Report*, 35 Cal. L. Revision Comm’n Reports 1 (2005) & sources cited.

92. See former Code Civ. Proc. §§ 689d, 690.51, 722.5.

93. 1976 Cal. Stat. ch. 1288, § 5.

1 Considerations of convenience are thus insufficient to justify the current
 2 equivalent of concurrent jurisdiction (i.e., allowing a choice of which
 3 jurisdictional classification to use, as opposed to the normal practice of requiring a
 4 particular type of case to be classified as either limited or unlimited).⁹⁴ Further, it
 5 might not be constitutional to allow a choice of how to classify a particular type of
 6 matter.⁹⁵

7 For these reasons, it seems inadvisable to continue the concurrent jurisdiction
 8 feature of Section 688.010. Rather, the Law Revision Commission recommends
 9 that the provision be amended to mandate that a tax enforcement proceeding be
 10 classified as a limited civil case under specified circumstances.⁹⁶

11 FURTHER WORK

12 This tentative recommendation does not purport to deal with all remaining
 13 statutes made obsolete by trial court restructuring. The Commission will continue
 14 to propose reforms addressing obsolete statutes as issues are resolved and time
 15 warrants. Failure to address a particular statute in this recommendation should not
 16 be construed to mean that the Commission has decided the statute should be
 17 preserved over the general restructuring provisions. The statute may be the subject
 18 of a future recommendation by the Commission.

94. The convenience of trying related cases in the same court would only be a relevant factor at the appellate level — i.e., if a superior court decided two related tax cases, a limited civil case and an unlimited civil case, and both decisions were appealed. Then the decision in the unlimited civil case would be appealable to the court of appeal, while the decision in the other case would be appealable to the appellate division. That situation probably would be rare. It would not seem to justify a deviation from the normal practice of requiring a particular type of case to be classified as either limited or unlimited, as opposed to allowing a choice of which classification to use (the equivalent of concurrent jurisdiction in a unified court).

95. Before unification, the California Constitution said that “[s]uperior courts have original jurisdiction in all causes except those given by statute to other trial courts.” Former Cal. Const. art. VI, § 10. Case law interpreted this provision to mean that the superior court “does not have concurrent jurisdiction with the municipal courts within the same county.” *Williams v. Superior Court*, 219 Cal. App. 3d 171, 175 n.4, 268 Cal. Rptr. (1990); see also *Marlow v. Campbell*, 7 Cal. App. 4th 921, 925-26, 9 Cal. Rptr. 2d 516 (1992). Put differently, courts took the view that municipal court jurisdiction was carved out of superior court jurisdiction; the two types of jurisdiction could not constitutionally overlap. *Marlow*, 7 Cal. App. 4th at 926; *Castellini v. Municipal Court*, 7 Cal. App. 3d 174, 176, 86 Cal. Rptr. 698 (1970).

Similarly, although the concept of a limited civil case is not embedded in the current California Constitution, the constitutional provision governing appellate jurisdiction might be interpreted to preclude concurrent appellate jurisdiction. Under that provision, the appellate division of the superior court has appellate jurisdiction in causes prescribed by statute, *except* where the appellate courts have appellate jurisdiction. Cal. Const. art. VI, § 11. Courts might interpret this language to mean that a particular type of cause must either be appealable to the appellate division or appealable to an appellate court, but not both. Consequently, courts might invalidate a statute that permits a particular type of cause to be classified as either a limited civil case or an unlimited civil case. In effect, a statute like this would put such a cause within the appellate jurisdiction of both the appellate division and the court of appeal.

96. See proposed amendment to Code of Civil Procedure Section 688.010 *infra*.

Contents

PROPOSED LEGISLATION.....	23
Bus. & Prof. Code § 6455 (amended). Violation of chapter governing paralegals	23
Bus. & Prof. Code § 12606 (amended). Misleading packaging of commodity	23
Bus. & Prof. Code § 12606.2 (amended). Misleading food containers.....	25
Code Civ. Proc. § 399 (amended). Transfer of action or proceeding	27
Code Civ. Proc. § 580 (amended). Relief awardable	28
Code Civ. Proc. § 586 (amended). Judgment as if defendant failed to answer	29
Code Civ. Proc. § 688.010 (amended). Classification of proceeding to enforce tax liability pursuant to warrant or notice of levy	30
Code Civ. Proc. § 688.030 (amended). Exemption or third-party claim when property is levied on for tax collection	31
Code Civ. Proc. § 904.1 (amended). Appeal in unlimited civil case.....	32
Code Civ. Proc. § 904.2 (amended). Appeal from ruling by judicial officer in limited civil case	33
Code Civ. Proc. § 904.3 (added). Appeal from judgment of appellate division on petition for mandamus or prohibition	33
Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review	34
Code Civ. Proc. § 1068.5 (added). Writ of review in small claims case.....	35
Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate.....	36
Code Civ. Proc. § 1085.3 (added). Writ of mandate in small claims case.....	36
Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition	37
Code Civ. Proc. § 1103.5 (added). Writ of prohibition in small claims case.....	38
Food & Agric. Code § 25564 (amended). Destruction of perishable noncomplying lot of poultry meat.....	39
Food & Agric. Code § 29733 (amended). Failure to recondition or remark honey	39
Food & Agric. Code § 43039 (amended). Destruction of perishable noncomplying lot of fruits, nuts, or vegetables	40
Food & Agric. Code § 59289 (amended). Petition to divert or destroy lot in violation of marketing order or agreement	40
Gov't Code § 12965 (amended). Accusation or civil action for unlawful employment practice	41
Gov't Code § 12980 (amended). Complaint, accusation, and civil action for housing discrimination	44
Penal Code § 977 (amended). Presence of defendant and counsel.....	46
Penal Code § 977.2 (amended). Appearance and arraignment by two-way electronic audiovideo communication.....	48

PROPOSED LEGISLATION

1 **Bus. & Prof. Code § 6455 (amended). Violation of chapter governing paralegals**

2 SEC. _____. Section 6455 of the Business and Professions Code is amended to
3 read:

4 6455. (a) Any consumer injured by a violation of this chapter may file a
5 complaint and seek redress in ~~any municipal or~~ superior court for injunctive relief,
6 restitution, and damages. Attorney's fees shall be awarded in this action to the
7 prevailing plaintiff.

8 (b) Any person who violates the provisions of Section 6451 or 6452 is guilty of
9 an infraction for the first violation, which is punishable upon conviction by a fine
10 of up to two thousand five hundred dollars (\$2,500) as to each consumer with
11 respect to whom a violation occurs, and is guilty of a misdemeanor for the second
12 and each subsequent violation, which is punishable upon conviction by a fine of
13 two thousand five hundred dollars (\$2,500) as to each consumer with respect to
14 whom a violation occurs, or imprisonment in a county jail for not more than one
15 year, or by both that fine and imprisonment. Any person convicted of a violation
16 of this section shall be ordered by the court to pay restitution to the victim
17 pursuant to Section 1202.4 of the Penal Code.

18 **Comment.** Subdivision (a) of Section 6455 is amended to reflect unification of the municipal
19 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For the
20 jurisdictional classification of an action under subdivision (a), see Code of Civil Procedure
21 Sections 85 (limited civil cases) and 580 (relief awardable).

22 **Bus. & Prof. Code § 12606 (amended). Misleading packaging of commodity**

23 SEC. _____. Section 12606 of the Business and Professions Code is amended to
24 read:

25 12606. (a) No container wherein commodities are packed shall have a false
26 bottom, false sidewalls, false lid or covering, or be otherwise so constructed or
27 filled, wholly or partially, as to facilitate the perpetration of deception or fraud.

28 (b) No container shall be made, formed, or filled as to be misleading. A
29 container that does not allow the consumer to fully view its contents shall be
30 considered to be filled as to be misleading if it contains nonfunctional slack fill.
31 Slack fill is the difference between the actual capacity of a container and the
32 volume of product contained therein. Nonfunctional slack fill is the empty space in
33 a package that is filled to less than its capacity for reasons other than the
34 following:

35 (1) Protection of the contents of the package.

36 (2) The requirements of machines used for enclosing the contents of the
37 package.

38 (3) Unavoidable product settling during shipping and handling.

1 (4) The need to utilize a larger than required package or container to provide
2 adequate space for the legible presentation of mandatory and necessary labeling
3 information, such as those based on the regulations adopted by the Food and Drug
4 Administration or state or federal agencies under federal or state law, laws or
5 regulations adopted by foreign governments, or under an industrywide voluntary
6 labeling program.

7 (5) The fact that the product consists of a commodity that is packaged in a
8 decorative or representational container where the container is part of the
9 presentation of the product and has value that is both significant in proportion to
10 the value of the product and independent of its function to hold the product, such
11 as a gift combined with a container that is intended for further use after the
12 product is consumed, or durable commemorative or promotional packages.

13 (6) An inability to increase the level of fill or to further reduce the size of the
14 package, such as where some minimum package size is necessary to accommodate
15 required labeling, discourage pilfering, facilitate handling, or accommodate
16 tamper-resistant devices.

17 (7) The product container bears a reasonable relationship to the actual amount of
18 product contained inside, and the dimensions of the actual product container, the
19 product, or the amount of product therein is visible to the consumer at the point of
20 sale, or where obvious secondary use packaging is involved.

21 (8) The dimensions of the product or immediate product container are visible
22 through the exterior packaging, or where the actual size of the product or
23 immediate product container is clearly and conspicuously depicted on the exterior
24 packaging, accompanied by a clear and conspicuous disclosure that the
25 representation is the “actual size” of the product or the immediate product
26 container.

27 (9) The presence of any head space within an immediate product container
28 necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or
29 powders by consumers prior to use.

30 (10) The exterior packaging contains a product delivery or dosing device if the
31 device is visible, or a clear and conspicuous depiction of the device appears on the
32 exterior packaging, or it is readily apparent from the conspicuous exterior
33 disclosures or the nature and name of the product that a delivery or dosing device
34 is contained in the package.

35 (11) The exterior packaging or immediate product container is a kit that consists
36 of a system, or multiple components, designed to produce a particular result that is
37 not dependent upon the quantity of the contents, if the purpose of the kit is clearly
38 and conspicuously disclosed on the exterior packaging.

39 (12) The exterior packaging of the product is routinely displayed using tester
40 units or demonstrations to consumers in retail stores, so that customers can see the
41 actual, immediate container of the product being sold, or a depiction of the actual
42 size thereof prior to purchase.

1 (13) The exterior packaging consists of single or multi-unit presentation boxes
2 of holiday or gift packages if the purchaser can adequately determine the quantity
3 and sizes of the immediate product container at the point of sale.

4 (14) The exterior packaging is for a combination of one purchased product,
5 together with a free sample or gift, wherein the exterior packaging is necessarily
6 larger than it would otherwise be due to the inclusion of the sample or gift, if the
7 presence of both products and the quantity of each product are clearly and
8 conspicuously disclosed on the exterior packaging.

9 (15) The exterior packaging or immediate product container encloses computer
10 hardware or software designed to serve a particular computer function, if the
11 particular computer function to be performed by the computer hardware or
12 software is clearly and conspicuously disclosed on the exterior packaging.

13 (c) Any sealer may seize a container that facilitates the perpetration of deception
14 or fraud and the contents of the container. By order of the ~~municipal or~~ superior
15 court of the ~~city or~~ county within which a violation of this section occurs, the
16 containers seized shall be condemned and destroyed or released upon ~~such~~
17 conditions ~~as~~ the court may impose to insure against their use in violation of this
18 chapter. The contents of any condemned container shall be returned to the owner
19 thereof if the owner furnishes proper facilities for the return. A proceeding under
20 this section is a limited civil case if the value of the property in controversy is less
21 than or equal to the maximum amount in controversy for a limited civil case under
22 Section 85 of the Code of Civil Procedure.

23 **Comment.** Subdivision (c) of Section 12606 is amended to reflect unification of the municipal
24 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

25 As amended, subdivision (c) makes clear that if the value of seized containers is less than or
26 equal to the maximum amount in controversy for a limited civil case, a proceeding under this
27 section is a limited civil case even though permanent injunctive relief generally is not allowed in
28 a limited civil case (Code Civ. Proc. §§ 85, 580). This preserves the pre-unification status quo,
29 under which a municipal court had authority to order condemnation of containers under this
30 section in specified circumstances.

31 Subdivision (c) is also amended to make stylistic revisions.

32 **Bus. & Prof. Code § 12606.2 (amended). Misleading food containers**

33 SEC. _____. Section 12606.2 of the Business and Professions Code is amended
34 to read:

35 12606.2. (a) This section applies to food containers subject to Section 403 (d) of
36 the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 343 (d)), and Section
37 100.100 of Title 21 of the Code of Federal Regulations. Section 12606 does not
38 apply to food containers subject to this section.

39 (b) No food containers shall be made, formed, or filled as to be misleading.

40 (c) A container that does not allow the consumer to fully view its contents shall
41 be considered to be filled as to be misleading if it contains nonfunctional slack fill.
42 Slack fill is the difference between the actual capacity of a container and the
43 volume of product contained therein. Nonfunctional slack fill is the empty space in

1 a package that is filled to less than its capacity for reasons other than the
2 following:

3 (1) Protection of the contents of the package.

4 (2) The requirements of the machines used for enclosing the contents in the
5 package.

6 (3) Unavoidable product settling during shipping and handling.

7 (4) The need for the package to perform a specific function, such as where
8 packaging plays a role in the preparation or consumption of a food, if that function
9 is inherent to the nature of the food and is clearly communicated to consumers.

10 (5) The fact that the product consists of a food packaged in a reusable container
11 where the container is part of the presentation of the food and has value that is
12 both significant in proportion to the value of the product and independent of its
13 function to hold the food, such as a gift product consisting of a food or foods
14 combined with a container that is intended for further use after the food is
15 consumed or durable commemorative or promotional packages.

16 (6) Inability to increase the level of fill or to further reduce the size of the
17 package, such as where some minimum package size is necessary to accommodate
18 required food labeling exclusive of any vignettes or other nonmandatory designs
19 or label information, discourage pilfering, facilitate handling, or accommodate
20 ~~tamper-resistant~~ tamper-resistant devices.

21 This section shall be interpreted consistent with the comments by the United
22 States Food and Drug Administration on the regulations contained in Section
23 100.100 of Title 21 of the Code of Federal Regulations, interpreting Section
24 403(d) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 343(d)), as
25 those comments are reported on pages 64123 to 64137, inclusive, of Volume 58 of
26 the Federal Register.

27 (d) If the requirements of this section do not impose the same requirements as
28 are imposed by Section 403(d) of the Federal Food, Drug and Cosmetic Act (21
29 U.S.C. Sec. ~~343(d)~~, 343(d)), or any regulation promulgated pursuant thereto, then
30 this section is not operative to the extent that it is not identical to the federal
31 requirements, and for this purpose those federal requirements are incorporated into
32 this section and shall apply as if they were set forth in this section.

33 (e) Any sealer may seize any container that is in violation of this section and the
34 contents of the container. By order of the ~~municipal~~ or superior court of the ~~city or~~
35 county within which a violation of this section occurs, the containers seized shall
36 be condemned and destroyed or released upon any conditions that the court may
37 impose to ensure against their use in violation of this chapter. The contents of any
38 condemned container shall be returned to the owner thereof if the owner furnishes
39 proper facilities for the return. A proceeding under this section is a limited civil
40 case if the value of the property in controversy is less than or equal to the
41 maximum amount in controversy for a limited civil case under Section 85 of the
42 Code of Civil Procedure.

Comment. Subdivision (e) of Section 12606.2 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

As amended, subdivision (e) makes clear that if the value of seized containers is less than or equal to the maximum amount in controversy for a limited civil case, a proceeding under this section is a limited civil case even though permanent injunctive relief generally is not allowed in a limited civil case (Code Civ. Proc. §§ 85, 580). This preserves the pre-unification status quo, under which a municipal court had authority to order condemnation of containers under this section in specified circumstances.

Section 12606.2 is also amended to correct a spelling error in subdivision (c)(6) and a typographical mistake in subdivision (d).

Note. The amendment shown above will require adjustment if Senate Bill 1852 (Committee on Judiciary) is enacted and amends Business and Professions Code Section 12606.2.

Code Civ. Proc. § 399 (amended). Transfer of action or proceeding

SEC. _____. Section 399 of the Code of Civil Procedure is amended to read:

399. (a) When an order is made transferring an action or proceeding under any of the provisions of this title, the clerk shall, after expiration of the time within which a petition for writ of mandate could have been filed pursuant to Section 400, or if ~~such a writ~~ petition is filed after judgment denying the writ becomes final, and upon payment of the costs and fees, transmit the pleadings and papers therein (or if the pleadings be oral a transcript of the same) to the clerk of the court to which the same is transferred. When the transfer is sought on any ground specified in subdivisions ~~2, 3, 4 and 5~~ (b), (c), (d), and (e) of Section 397, the costs and fees thereof, and of filing the papers in the court to which the transfer is ordered, shall be paid at the time the notice of motion is filed, by the party making the motion for the transfer. When the transfer is sought solely, or is ordered, because the action or proceeding was commenced in a court other than that designated as proper by this title, ~~such those~~ costs and fees (including any expenses and attorney's fees awarded defendant pursuant to Section 396b) shall be paid by the plaintiff before ~~such the~~ transfer is made; and ~~if, in any such case, if~~ the defendant has paid ~~such those~~ costs and fees at the time of filing ~~his or her a~~ notice of motion, the same shall be repaid to the defendant, upon the making of ~~such the transfer~~ order. If ~~such those~~ costs and fees have not been so paid by the plaintiff within five days after service of notice of ~~such the transfer~~ order, then any other party interested therein, whether named in the complaint as a party or not, may pay ~~such those~~ costs and fees, and the clerk shall thereupon transmit the papers and pleadings therein as if ~~such those~~ costs and fees had been originally paid by the plaintiff, and the same shall be a proper item of costs of the party so paying the same, recoverable by ~~such that~~ party in the event ~~he or she that party~~ prevails in the action; otherwise, the same shall be offset against and deducted from the amount, if any, awarded the plaintiff in the event the plaintiff prevails against ~~such that~~ party in ~~such the~~ action. The cause of action shall not be further prosecuted in any court until ~~such those~~ costs and fees are paid. If ~~such those~~ costs and fees are not paid within 30 days after service of notice of ~~such the transfer~~

order, or if a copy of a petition for writ of mandate pursuant to Section 400 is filed in the trial court, or if an appeal is taken pursuant to Section 904.2 ~~or 904.3~~, then within 30 days after notice of finality of the order of transfer, the court on a duly noticed motion by any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court prior to satisfaction of the court's order for costs and fees. When a petition for writ of mandate or appeal does not result in a stay of proceedings, the time for payment of ~~such~~ those costs shall be 60 days after service of the notice of the order.

(b) At the time of transmittal of the papers and pleadings, the clerk shall mail notice to all parties who have appeared in the action or special proceeding, stating the date on which ~~such~~ transmittal occurred. Promptly upon receipt of ~~such~~ the papers and pleadings, the clerk of the court to which the action or proceeding is transferred shall mail notice to all parties who have appeared in the action or special proceeding, stating the date of the filing of the case and number assigned to the case in ~~such~~ the court.

(c) The court to which an action or proceeding is transferred under this title shall have and exercise over the same the like jurisdiction as if it had been originally commenced therein, all prior proceedings being saved, and ~~such~~ the court may require ~~such~~ amendment of the pleadings, the filing and service of ~~such~~ amended, additional, or supplemental pleadings, and the giving of ~~such~~ notice, as may be necessary for the proper presentation and determination of the action or proceeding in ~~such~~ the court.

Comment. Section 399 is amended to delete an obsolete cross-reference to former Section 904.3, relating to appeals from justice courts. The justice courts no longer exist and former Section 904.3 was repealed. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994); 1976 Cal. Stat. ch. 1288, § 13.

Section 399 is also amended to correct the cross-references to subdivisions of Section 397. Former subdivisions (2)-(5) were relabeled as subdivisions (b)-(e). See 1992 Cal. Stat. ch. 163, § 19. Section 399 is revised to reflect that change.

Section 399 is further amended to insert subdivisions and make stylistic revisions.

Code Civ. Proc. § 580 (amended). Relief awardable

SEC. _____. Section 580 of the Code of Civil Procedure is amended to read:

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

(1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.

(2) A permanent injunction, except as otherwise authorized by statute.

(3) A determination of title to real property.

(4) Declaratory relief, except as authorized by Section 86.

Comment. Subdivision (b) of Section 580 is amended to clarify its interrelationship with provisions such as Business and Professions Code Section 12606, under which a court in a limited civil case is authorized to grant relief that might be considered a permanent injunction (e.g., an order to destroy property packed in misleading containers). See also Bus. & Prof. Code § 12606.2; Food & Agric. Code §§ 25564, 29733, 43039, 59289.

Note. Code of Civil Procedure Section 580 was recently amended by Assembly Bill 2126 (Lieu & Leno), 2006 Cal. Stat. ch. 86. The new version will become operative January 1, 2007. The new version is used in the amendment shown above.

Code Civ. Proc. § 586 (amended). Judgment as if defendant failed to answer

SEC. _____. Section 586 of the Code of Civil Procedure is amended to read:

586. (a) In the following cases the same proceedings shall be had, and judgment shall be rendered in the same manner, as if the defendant had failed to answer:

(1) If the complaint has been amended, and the defendant fails to answer it, as amended, or demur thereto, or file a notice of motion to strike, of the character specified in Section 585, within 30 days after service thereof or within the time allowed by the court.

(2) If the demurrer to the complaint is overruled and a motion to strike, of the character specified in Section 585, is denied, or where only one thereof is filed, if the demurrer is overruled or the motion to strike is denied, and the defendant fails to answer the complaint within the time allowed by the court.

(3) If a motion to strike, of the character specified in Section 585, is granted in whole or in part, and the defendant fails to answer the unstricken portion of the complaint within the time allowed by the court, no demurrer having been sustained or being then pending.

(4) If a motion to quash service of summons or to stay or ~~dismiss~~, dismiss the action has been filed, or writ of mandate sought and notice thereof given, as provided in Section 418.10, and upon denial of ~~such~~ the motion or writ, defendant fails to respond to the ~~complaint~~, complaint within the time provided in ~~such~~ that section or as otherwise provided by law.

(5) If the demurrer to the answer is sustained and the defendant fails to amend the answer within the time allowed by the court.

(6)(A) If a motion to transfer pursuant to Section 396b is denied and the defendant fails to respond to the complaint within the time allowed by the court pursuant to subdivision (e) of Section 396b or within the time provided in subparagraph (C).

(B) If a motion to transfer pursuant to Section 396b is granted and the defendant fails to respond to the complaint within 30 days of the mailing of notice of the

filing and case number by the clerk of the court to which the action or proceeding is transferred or within the time provided in subparagraph (C).

(C) If the order granting or denying a motion to transfer pursuant to Section 396a or 396b is the subject of an appeal pursuant to Section 904.2 ~~or 904.3~~ in which a stay is granted or of a mandate proceeding pursuant to Section 400, the court having jurisdiction over the trial, upon application or on its own motion after ~~such the~~ appeal or mandate proceeding becomes final or upon earlier termination of a stay, shall allow the defendant a reasonable time to respond to the complaint. Notice of the order allowing the defendant further time to respond to the complaint shall be promptly served by the party who obtained ~~such the~~ order or by the clerk if the order is made on the court's own motion.

(7) If a motion to strike the answer in whole, of the character specified in Section 585, is granted without leave to amend, or if a motion to strike the answer in whole or in part, of the character specified in Section 585, is granted with leave to amend and the defendant fails to amend the answer within the time allowed by the court.

(8) If a motion to dismiss pursuant to Section 583.250 is denied and the defendant fails to respond within the time allowed by the court.

(b) For the purposes of this section, "respond" means to answer, to demur, or to move to strike.

Comment. Subdivision (a)(6)(C) of Section 586 is amended to delete an obsolete cross-reference to former Section 904.3, relating to appeals from justice courts. The justice courts no longer exist and former Section 904.3 was repealed. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994); 1976 Cal. Stat. ch. 1288, § 13.

Section 586 is further amended to make stylistic revisions.

Code Civ. Proc. § 688.010 (amended). Classification of proceeding to enforce tax liability pursuant to warrant or notice of levy

SEC. _____. Section 688.010 of the Code of Civil Procedure is amended to read:
688.010. ~~For A proceeding for the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:~~

~~(a) The superior court, regardless of whether the municipal court also has jurisdiction under subdivision (b).~~

~~(b) The municipal court~~ article is a limited civil case if (1) the amount of liability sought to be collected does not exceed the ~~jurisdictional amount of the court~~ maximum amount in controversy for a limited civil case provided in Section 85, and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

Comment. Section 688.010 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

In a unified court system, the superior court has original jurisdiction of all causes except certain writ proceedings. Cal. Const. art. VI, § 10. Consequently, it is no longer necessary to specify which court has jurisdiction of a proceeding under this article. Language to that effect is deleted as obsolete.

Before unification, both the superior court and the municipal court had jurisdiction of a proceeding under this article if the amount sought was within the jurisdictional limit of the municipal court and the legality of the liability was uncontested. In a unified court system, that would be equivalent to permitting such a proceeding to be treated as either a limited civil case or an unlimited civil case. See Sections 85 & Comment (limited civil cases), 88 (unlimited civil cases). This concurrent jurisdiction feature is not continued. Under Section 688.010 as amended, it is mandatory, not optional, to treat a proceeding under this article as a limited civil case if the amount in controversy is within the maximum for a limited civil case and the legality of the liability is uncontested.

Code Civ. Proc. § 688.030 (amended). Exemption or third-party claim when property is levied on for tax collection

SEC. _____. Section 688.030 of the Code of Civil Procedure is amended to read:
688.030. (a) Whenever pursuant to any provision of the Public Resources Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the superior court ~~specified in Section 688.010~~ in the county where the property levied upon is located.

Comment. Section 688.030 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

1 **Code Civ. Proc. § 904.1 (amended). Appeal in unlimited civil case**

2 SEC. _____. Section 904.1 of the Code of Civil Procedure is amended to read:

3 904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal.
4 An appeal, other than in a limited civil case, may be taken from any of the
5 following:

6 (1) From a judgment, except (A) an interlocutory judgment, other than as
7 provided in paragraphs (8), (9), and (11), or (B) a judgment of contempt that is
8 made final and conclusive by Section 1222, ~~or (C) a judgment granting or denying~~
9 ~~a petition for issuance of a writ of mandamus or prohibition directed to a~~
10 ~~municipal court or the superior court in a county in which there is no municipal~~
11 ~~court or the judge or judges thereof that relates to a matter pending in the~~
12 ~~municipal or superior court. However, an appellate court may, in its discretion,~~
13 ~~review a judgment granting or denying a petition for issuance of a writ of~~
14 ~~mandamus or prohibition, or a judgment or order for the payment of monetary~~
15 ~~sanctions, upon petition for an extraordinary writ.~~

16 (2) From an order made after a judgment made appealable by paragraph (1).

17 (3) From an order granting a motion to quash service of summons or granting a
18 motion to stay or dismiss the action on the ground of inconvenient forum.

19 (4) From an order granting a new trial or denying a motion for judgment
20 notwithstanding the verdict.

21 (5) From an order discharging or refusing to discharge an attachment or granting
22 a right to attach order.

23 (6) From an order granting or dissolving an injunction, or refusing to grant or
24 dissolve an injunction.

25 (7) From an order appointing a receiver.

26 (8) From an interlocutory judgment, order, or decree, hereafter made or entered
27 in an action to redeem real or personal property from a mortgage thereof, or a lien
28 thereon, determining the right to redeem and directing an accounting.

29 (9) From an interlocutory judgment in an action for partition determining the
30 rights and interests of the respective parties and directing partition to be made.

31 (10) From an order made appealable by the provisions of the Probate Code or
32 the Family Code.

33 (11) From an interlocutory judgment directing payment of monetary sanctions
34 by a party or an attorney for a party if the amount exceeds five thousand dollars
35 (\$5,000).

36 (12) From an order directing payment of monetary sanctions by a party or an
37 attorney for a party if the amount exceeds five thousand dollars (\$5,000).

38 (13) From an order granting or denying a special motion to strike under Section
39 425.16.

40 (b) Sanction orders or judgments of five thousand dollars (\$5,000) or less
41 against a party or an attorney for a party may be reviewed on an appeal by that
42 party after entry of final judgment in the main action, or, at the discretion of the
43 court of appeal, may be reviewed upon petition for an extraordinary writ.

1 **Comment.** Subdivision (a) of Section 904.1 is amended to reflect unification of the municipal
2 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. Former
3 Section 904.1(a)(1)(C) is continued in Section 904.3, with revisions to reflect unification.

4 **Note.** The amendment shown above will require adjustment if Assembly Bill 2303
5 (Committee on Judiciary) is enacted and amends Code of Civil Procedure Section 904.1.

6 **Code Civ. Proc. § 904.2 (amended). Appeal from ruling by judicial officer in limited civil**
7 **case**

8 SEC. _____. Section 904.2 of the Code of Civil Procedure is amended to read:
9 904.2. An appeal of a ruling by a superior court judge or other judicial officer in
10 a limited civil case is to the appellate division of the superior court. An appeal of a
11 ruling by a superior court judge or other judicial officer in a limited civil case may
12 be taken from any of the following:

13 (a) From a judgment, except (1) an interlocutory judgment, or (2) a judgment of
14 contempt that is made final and conclusive by Section 1222.

15 (b) From an order made after a judgment made appealable by subdivision (a).

16 (c) From an order changing or refusing to change the place of trial.

17 (d) From an order granting a motion to quash service of summons or granting a
18 motion to stay or dismiss the action on the ground of inconvenient forum.

19 (e) From an order granting a new trial or denying a motion for judgment
20 notwithstanding the verdict.

21 (f) From an order discharging or refusing to discharge an attachment or granting
22 a right to attach order.

23 (g) From an order granting or dissolving an injunction, or refusing to grant or
24 dissolve an injunction.

25 (h) From an order appointing a receiver.

26 **Comment.** Section 904.2 is amended to make clear that it governs the appealability of a ruling
27 by a superior court judge or other judicial officer in a limited civil case. For the appealability of a
28 judgment by the appellate division of the superior court on a writ petition in a limited civil case,
29 see Section 904.3.

30 **Note.** The amendment shown above will require adjustment if Assembly Bill 2303
31 (Committee on Judiciary) is enacted and amends Code of Civil Procedure Section 904.2.

32 **Code Civ. Proc. § 904.3 (added). Appeal from judgment of appellate division on petition for**
33 **mandamus or prohibition**

34 SEC. _____. Section 904.3 is added to the Code of Civil Procedure, to read:

35 904.3. An appeal may not be taken from a judgment of the appellate division of
36 a superior court granting or denying a petition for issuance of a writ of mandamus
37 or prohibition directed to the superior court, or a judge thereof, in a limited civil
38 case or a misdemeanor or infraction case. An appellate court may, in its discretion,
39 upon petition for extraordinary writ, review the judgment.

40 **Comment.** Section 904.3 continues the substance of former Section 904.1(a)(1)(C), with
41 revisions to reflect unification of the municipal and superior courts pursuant to Article VI,
42 Section 5(e), of the California Constitution.

Before 1982, if a litigant disagreed with a prejudgment ruling of a municipal or justice court, the litigant could seek an extraordinary writ from the superior court. A judgment on the writ petition could be appealed to the appropriate court of appeal. See *Gilbert v. Municipal Court*, 73 Cal. App. 3d 723, 140 Cal. Rptr. 897 (1977); *Burrus v. Municipal Court*, 36 Cal. App. 3d 233, 111 Cal. Rptr. 539 (1973).

In 1982, the Legislature amended Section 904.1 to preclude an appeal from a superior court judgment on a petition for a writ of mandamus or prohibition directed to a municipal or justice court. See 1982 Cal. Stat. ch. 1198, § 63.2. The language added in 1982, with some modifications, later became former Section 904.1(a)(1)(C). The provision was applicable not just in a civil case, but also when a party to a misdemeanor case sought a petition for a writ of mandamus or prohibition. See *Baluyut v. Superior Court*, 12 Cal. 4th 826, 829 n.3, 911 P.2d 1, 50 Cal. Rptr. 2d 101 (1996); *Serna v. Superior Court*, 40 Cal. 3d 239, 245-46 & n.2, 707 P.2d 793, 219 Cal. Rptr. 420 (1985); see also *Bermudez v. Municipal Court*, 1 Cal. 4th 855, 863, 823 P.2d 1210, 4 Cal. Rptr. 2d 609 (1992).

In a unified court system, civil cases that used to be adjudicated in the municipal and justice courts are classified as limited civil cases and adjudicated in the superior court. See Section 85 & Comment; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 64-65 (1998). Misdemeanor and infraction cases are also adjudicated in superior court. Cal. Const. art. VI, § 10; see also Penal Code § 19.7 (jurisdiction of infraction). If a litigant disagrees with a prejudgment ruling in a limited civil case or a misdemeanor or infraction case, the litigant can seek an extraordinary writ from the appellate division of the superior court. See Cal. Const. art. VI, § 10; see also Sections 1068(b), 1085(b), 1103(b) & Comments.

By precluding an appeal from a judgment of the appellate division on a petition for a writ of mandamus or prohibition directed to the superior court in a limited civil case or a misdemeanor or infraction case, Section 904.3 preserves the intent of former Section 904.1(a)(1)(C). Like former Section 904.1(a)(1)(C), Section 904.3 makes clear that although such a judgment cannot be appealed, a litigant may seek review of the judgment by extraordinary writ.

The clause in former Section 904.1(a)(1)(C) permitting an appellate court to review a sanction order upon petition for an extraordinary writ is not continued. That clause was unnecessary and redundant. See Section 904.1(b) (sanction order of \$5,000 or less against party or attorney for party may be reviewed on appeal after entry of final judgment in main action, or, at discretion of court of appeal, reviewed upon petition for extraordinary writ); see also Section 904.1(a)(12) (sanction order exceeding \$5,000 is appealable).

Note. Proposed Section 904.3 would state that an appeal “may not be taken from a judgment of the appellate division of a superior court granting or denying a petition for issuance of a writ of mandamus or prohibition directed to the superior court, or a judge thereof, in a limited civil case or a misdemeanor or infraction case. (Emphasis added.) Is it appropriate that the provision refers to a writ petition in a misdemeanor or infraction case, as well as a writ petition in a limited civil case? Should the substance of proposed Section 904.3 be split into two provisions: One in the Code of Civil Procedure that pertains to a writ petition in a limited civil case, and one in the Penal Code that pertains to a writ petition in a misdemeanor or infraction case? Alternatively, should there be just one such provision, applicable only to a writ petition in a limited civil case? The Law Revision Commission is interested in any comments on proposed Section 904.3, but particularly solicits comment on these points.

Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review

SEC. _____. Section 1068 of the Code of Civil Procedure is amended to read:

1068. (a) A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of ~~such~~ that tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

(b) The appellate division of the superior court may grant a writ of review directed to the superior court in a limited civil case subject to its appellate jurisdiction or in a misdemeanor or infraction case subject to its appellate jurisdiction. Where the appellate division grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. Subdivision (b) of Section 1068 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10. For further guidance on seeking a writ of review in a small claims case, see Section 1068.5.

Section 1068 is also amended to make a stylistic revision.

Code Civ. Proc. § 1068.5 (added). Writ of review in small claims case

SEC. _____. Section 1068.5 is added to the Code of Civil Procedure, to read:

1068.5. (a) A writ of review directed to a superior court with respect to a ruling of the small claims division may be granted by an appellate court or by a judicial officer of the superior court, other than the judicial officer who heard the case in the small claims division. Where a judicial officer of a superior court grants a writ of review directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

(b) Notwithstanding subdivision (a), a writ of review directed to the superior court with respect to a postjudgment enforcement order in a small claims case may be granted by an appellate court or by the appellate division of the superior court.

Comment. Section 1068.5 is added to clarify the proper treatment of a writ petition relating to a small claims case.

Subdivision (a) makes clear that if a writ of review is sought in superior court with respect to a ruling of the small claims division, the writ proceeding is to be heard by a judicial officer of the superior court other than the one who heard the case in the small claims division. This parallels the treatment of a small claims appeal. See Section 116.770 (small claims appeal is to be heard by judicial officer of superior court other than officer who heard case in small claims division); see also Section 1068 Comment (200x) (appellate division lacks writ jurisdiction of judgment or prejudgment ruling in small claims case); *City & County of San Francisco v. Small Claims Court for the Northern Judicial District of San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr. 340 (1983) (affirming decision of superior court judge on writ petition relating to small claims case, thus implicitly deciding that superior court judge had writ jurisdiction); *Gardiana v. Small Claims Court for the San Leandro Hayward Judicial District of Alameda County*, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675 (1976) (same).

Subdivision (b) codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court of Los Angeles County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small claims case is a limited civil case. *Id.* at 138. Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs. Section 87.

A special statute governs a small claims appeal (Section 116.770), so the general rule giving the appellate division jurisdiction of an appeal in a limited civil case (Section 904.2) is inapplicable. But there is no special statute governing appeal of a postjudgment enforcement order in a small claims case. Consequently, the situation is governed by the general rule giving the appellate division jurisdiction of an appeal in a limited civil case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

Because the appellate division has appellate jurisdiction of a postjudgment enforcement order in a small claims case, the appellate division also has extraordinary writ jurisdiction of a postjudgment enforcement order in a small claims case. *Id.* at 145; see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of Section 1068(b) as applied in the specific context of a postjudgment enforcement order in a small claims case.

Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate

SEC. _____. Section 1085 of the Code of Civil Procedure is amended to read:

1085. (a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by ~~such~~ that inferior tribunal, corporation, board, or person.

(b) The appellate division of the superior court may grant a writ of mandate directed to the superior court in a limited civil case subject to its appellate jurisdiction or in a misdemeanor or infraction case subject to its appellate jurisdiction. Where the appellate division grants a writ of ~~review~~ mandate directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. The first sentence of subdivision (b) of Section 1085 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10. For further guidance on seeking a writ of mandate in a small claims case, see Section 1085.3.

The second sentence of subdivision (b) is amended to refer to a writ of mandate instead of a writ of review.

Section 1085 is also amended to make a stylistic revision.

Code Civ. Proc. § 1085.3 (added). Writ of mandate in small claims case

SEC. _____. Section 1085.3 is added to the Code of Civil Procedure, to read:

1085.3. (a) A writ of mandate directed to a superior court with respect to a ruling of the small claims division may be granted by an appellate court or by a judicial officer of the superior court, other than the judicial officer who heard the case in the small claims division. Where a judicial officer of a superior court

grants a writ of mandate directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

(b) Notwithstanding subdivision (a), a writ of mandate directed to the superior court with respect to a postjudgment enforcement order in a small claims case may be granted by an appellate court or by the appellate division of the superior court.

Comment. Section 1085.3 is added to clarify the proper treatment of a writ petition relating to a small claims case.

Subdivision (a) makes clear that if a writ of mandate is sought in superior court with respect to a ruling of the small claims division, the writ proceeding is to be heard by a judicial officer of the superior court other than the one who heard the case in the small claims division. This parallels the treatment of a small claims appeal. See Section 116.770 (small claims appeal is to be heard by judicial officer of superior court other than officer who heard case in small claims division); see also Section 1085 Comment (200x) (appellate division lacks writ jurisdiction of judgment or prejudgment ruling in small claims case); *City & County of San Francisco v. Small Claims Court for the Northern Judicial District of San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr. 340 (1983) (affirming decision of superior court judge on writ petition relating to small claims case, thus implicitly deciding that superior court judge had writ jurisdiction); *Gardiana v. Small Claims Court for the San Leandro Hayward Judicial District of Alameda County*, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675 (1976) (same).

Subdivision (b) codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court of Los Angeles County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small claims case is a limited civil case. *Id.* at 138. Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs. Section 87.

A special statute governs a small claims appeal (Section 116.770), so the general rule giving the appellate division jurisdiction of an appeal in a limited civil case (Section 904.2) is inapplicable. But there is no special statute governing appeal of a postjudgment enforcement order in a small claims case. Consequently, the situation is governed by the general rule giving the appellate division jurisdiction of an appeal in a limited civil case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

Because the appellate division has appellate jurisdiction of a postjudgment enforcement order in a small claims case, the appellate division also has extraordinary writ jurisdiction of a postjudgment enforcement order in a small claims case. *Id.* at 145; see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of Section 1085(b) as applied in the specific context of a postjudgment enforcement order in a small claims case.

Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition

SEC. _____. Section 1103 of the Code of Civil Procedure is amended to read:

1103. (a) A writ of prohibition may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

(b) The appellate division of the superior court may grant a writ of prohibition directed to the superior court in a limited civil case subject to its appellate jurisdiction or in a misdemeanor or infraction case subject to its appellate jurisdiction. Where the appellate division grants a writ of ~~review~~ prohibition directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

Comment. The first sentence of subdivision (b) of Section 1103 is amended to more closely track the language of Article VI, Section 10, of the California Constitution. This is not a substantive change.

The amendment helps clarify the treatment of a small claims case. An appeal from a judgment in a small claims case is not within the jurisdiction of the appellate division. Rather, such an appeal consists of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division. See Section 116.770(a). Because the appellate division lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal. Const. art. VI, § 10. For further guidance on seeking a writ of prohibition in a small claims case, see Section 1103.5.

The second sentence of subdivision (b) is amended to refer to a writ of prohibition instead of a writ of review.

Code Civ. Proc. § 1103.5 (added). Writ of prohibition in small claims case

SEC. _____. Section 1103.5 of the Code of Civil Procedure is amended to read:

1103.5. (a) A writ of prohibition directed to a superior court with respect to a ruling of the small claims division may be granted by an appellate court or by a judicial officer of the superior court, other than the judicial officer who heard the case in the small claims division. Where a judicial officer of a superior court grants a writ of prohibition directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

(b) Notwithstanding subdivision (a), a writ of prohibition directed to the superior court with respect to a postjudgment enforcement order in a small claims case may be granted by an appellate court or by the appellate division of the superior court.

Comment. Section 1103.5 is added to clarify the proper treatment of a writ petition relating to a small claims case.

Subdivision (a) makes clear that if a writ of prohibition is sought in superior court with respect to a ruling of the small claims division, the writ proceeding is to be heard by a judicial officer of the superior court other than the one who heard the case in the small claims division. This parallels the treatment of a small claims appeal. See Section 116.770 (small claims appeal is to be heard by judicial officer of superior court other than officer who heard case in small claims division); see also Section 1085 Comment (200x) (appellate division lacks writ jurisdiction of judgment or prejudgment ruling in small claims case); *City & County of San Francisco v. Small Claims Court for the Northern Judicial District of San Mateo County*, 141 Cal. App. 3d 470, 470, 481, 190 Cal. Rptr. 340 (1983) (affirming decision of superior court judge on writ petition relating to small claims case, thus implicitly deciding that superior court judge had writ jurisdiction); *Gardiana v. Small Claims Court for the San Leandro Hayward Judicial District of Alameda County*, 59 Cal. App. 3d 412, 412, 425, 130 Cal. Rptr. 675 (1976) (same).

Subdivision (b) codifies *General Electric Capital Auto Financial Services, Inc. v. Appellate Division of the Superior Court of Los Angeles County*, 88 Cal. App. 4th 136, 105 Cal. Rptr. 2d 552 (2001). A small claims case is a limited civil case. *Id.* at 138. Where a statute or rule applicable to a small claims case conflicts with a statute or rule applicable to a limited civil case, the statute or rule applicable to a small claims case governs. Section 87.

A special statute governs a small claims appeal (Section 116.770), so the general rule giving the appellate division jurisdiction of an appeal in a limited civil case (Section 904.2) is inapplicable. But there is no special statute governing appeal of a postjudgment enforcement order in a small claims case. Consequently, the situation is governed by the general rule giving the appellate division jurisdiction of an appeal in a limited civil case. *General Electric Capital*, 88 Cal. App. 4th at 138, 144.

Because the appellate division has appellate jurisdiction of a postjudgment enforcement order in a small claims case, the appellate division also has extraordinary writ jurisdiction of a postjudgment enforcement order in a small claims case. *Id.* at 145; see Cal. Const. art. VI, § 10. Subdivision (b) thus states the rule of Section 1103(b) as applied in the specific context of a postjudgment enforcement order in a small claims case.

Food & Agric. Code § 25564 (amended). Destruction of perishable noncomplying lot of poultry meat

SEC. _____. Section 25564 of the Food and Agricultural Code is amended to read:

25564. If the lot of poultry meat which is held is perishable or subject to rapid deterioration, the enforcing officer may file a verified petition in ~~any~~ superior ~~or municipal~~ court ~~of the state~~ to destroy ~~such the~~ lot or otherwise abate the nuisance. The petition shall show the condition of the lot, that the lot is situated within the county, that the lot is held, and that notice of noncompliance has been served pursuant to this chapter. The court may thereupon order that ~~such the~~ lot be forthwith destroyed or the nuisance otherwise abated as set forth in ~~such the~~ order. A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum amount in controversy for a limited civil case under Section 85 of the Code of Civil Procedure.

Comment. Section 25564 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

As amended, the provision makes clear that if the value of poultry meat is less than or equal to the maximum amount in controversy for a limited civil case, a proceeding under this section is a limited civil case even though permanent injunctive relief generally is not allowed in a limited civil case (Code Civ. Proc. §§ 85, 580). This preserves the pre-unification status quo, under which a municipal court had authority to order destruction of poultry meat under this section in specified circumstances.

Section 25564 is also amended to make stylistic revisions.

Food & Agric. Code § 29733 (amended). Failure to recondition or remark honey

SEC. _____. Section 29733 of the Food and Agricultural Code is amended to read:

29733. If a packer or owner of honey, or the agent of either, after notification to the packer, owner, or agent that the honey and its containers are a public nuisance, refuses, or fails within a reasonable time, to recondition or remark the honey so as to comply with all requirements of this chapter, the honey and its containers:

(a) May be seized by the director or any enforcement officer.

(b) By order of the ~~municipal or~~ superior court of the county ~~or city~~ within which the honey and its containers may be, shall be condemned and destroyed, or released upon ~~such~~ conditions as the court, in its discretion, may impose to insure that it will not be packed, delivered for shipment, shipped, transported, or sold in violation of this chapter. A proceeding under this section is a limited civil case if the value of the property in controversy is less than or equal to the maximum

1 amount in controversy for a limited civil case under Section 85 of the Code of
2 Civil Procedure.

3 **Comment.** Section 29733 is amended to reflect unification of the municipal and superior
4 courts pursuant to Article VI, Section 5(e), of the California Constitution.

5 As amended, the provision makes clear that if the value of honey product is less than or equal
6 to the maximum amount in controversy for a limited civil case, a proceeding under this section is
7 a limited civil case even though permanent injunctive relief generally is not allowed in a limited
8 civil case (Code Civ. Proc. §§ 85, 580). This preserves the pre-unification status quo, under which
9 a municipal court had authority to order destruction of honey product under this section in
10 specified circumstances.

11 Section 29733 is also amended to make stylistic revisions.

12 **Food & Agric. Code § 43039 (amended). Destruction of perishable noncomplying lot of**
13 **fruits, nuts, or vegetables**

14 SEC. _____. Section 43039 of the Food and Agricultural Code is amended to
15 read:

16 43039. If the lot which is held is perishable or subject to rapid deterioration, the
17 enforcing officer may file a verified petition in ~~any~~ superior ~~or municipal~~ court ~~of~~
18 ~~the state~~ to destroy the lot or otherwise abate the nuisance. The petition shall show
19 the condition of the lot, that the lot is situated within the county, that the lot is
20 held, and that notice of noncompliance has been served as provided in this article.
21 The court may thereupon order that the lot be forthwith destroyed or the nuisance
22 otherwise abated as set forth in the order. A proceeding under this section is a
23 limited civil case if the value of the property in controversy is less than or equal to
24 the maximum amount in controversy for a limited civil case under Section 85 of
25 the Code of Civil Procedure.

26 **Comment.** Section 43039 is amended to reflect unification of the municipal and superior
27 courts pursuant to Article VI, Section 5(e), of the California Constitution.

28 As amended, the provision makes clear that if the value of food product is less than or equal to
29 the maximum amount in controversy for a limited civil case, a proceeding under this section is a
30 limited civil case even though permanent injunctive relief generally is not allowed in a limited
31 civil case (Code Civ. Proc. §§ 85, 580). This preserves the pre-unification status quo, under which
32 a municipal court had authority to order destruction of food product under this section in
33 specified circumstances.

34 **Food & Agric. Code § 59289 (amended). Petition to divert or destroy lot in violation of**
35 **marketing order or agreement**

36 SEC. _____. Section 59289 of the Food and Agricultural Code is amended to
37 read:

38 59289. (a) The enforcing officer may file a verified petition in ~~any~~ superior ~~or~~
39 ~~municipal~~ court ~~of this state~~ requesting permission to divert ~~such~~ the lot to any
40 other available lawful use or to destroy the lot. The verified petition shall show all
41 of the following:

42 ~~(a)~~ (1) The condition of the lot.

43 ~~(b)~~ (2) That the lot is situated within the territorial jurisdiction of the court in
44 which the petition is being filed.

1 ~~(c)~~ (3) That the lot is held, and that the notice of noncompliance has been served
2 as provided in Section 59285.

3 ~~(d)~~ (4) That the lot has not been reconditioned as required.

4 ~~(e)~~ (5) The name and address of the owner and the person in possession of the
5 lot.

6 ~~(f)~~ (6) That the owner has refused permission to divert or to destroy the lot.

7 **(b) A proceeding under this section is a limited civil case if the value of the**
8 **property in controversy is less than or equal to the maximum amount in**
9 **controversy for a limited civil case under Section 85 of the Code of Civil**
10 **Procedure.**

11 **Comment.** Section 59289 is amended to reflect unification of the municipal and superior
12 courts pursuant to Article VI, Section 5(e), of the California Constitution.

13 As amended, the provision makes clear that if the value of the lot in question is less than or
14 equal to the maximum amount in controversy for a limited civil case, a proceeding under this
15 section is a limited civil case even though permanent injunctive relief generally is not allowed in
16 a limited civil case (Code Civ. Proc. §§ 85, 580). This preserves the pre-unification status quo,
17 under which a municipal court had authority to order destruction of a lot under this section in
18 specified circumstances.

19 Section 59289 is also amended to make stylistic revisions.

20 **Gov't Code § 12965 (amended). Accusation or civil action for unlawful employment**
21 **practice**

22 SEC. _____. Section 12965 of the Government Code is amended to read:

23 12965. (a) In the case of failure to eliminate an unlawful practice under this part
24 through conference, conciliation, or persuasion, or in advance thereof if
25 circumstances warrant, the director in his or her discretion may cause to be issued
26 in the name of the department a written accusation. The accusation shall contain
27 the name of the person, employer, labor organization, or employment agency
28 accused, which shall be known as the respondent, shall set forth the nature of the
29 charges, shall be served upon the respondent together with a copy of the verified
30 complaint, as amended, and shall require the respondent to answer the charges at a
31 hearing.

32 For any complaint treated by the director as a group or class complaint for
33 purposes of investigation, conciliation, and accusation pursuant to Section 12961,
34 an accusation shall be issued, if at all, within two years after the filing of the
35 complaint. For any complaint alleging a violation of Section 51.7 of the Civil
36 Code, an accusation shall be issued, if at all, within two years after the filing of the
37 complaint. For all other complaints, an accusation shall be issued, if at all, within
38 one year after the filing of a complaint. If the director determines, pursuant to
39 Section 12961, that a complaint investigated as a group or class complaint under
40 Section 12961 is to be treated as a group or class complaint for purposes of
41 conciliation and accusation as well, that determination shall be made and shall be
42 communicated in writing within one year after the filing of the complaint to each

1 person, employer, labor organization, employment agency, or public entity alleged
2 in the complaint to have committed an unlawful practice.

3 (b) If an accusation is not issued within 150 days after the filing of a complaint,
4 or if the department earlier determines that no accusation will issue, the
5 department shall promptly notify, in writing, the person claiming to be aggrieved
6 that the department shall issue, on his or her request, the right-to-sue notice. This
7 notice shall indicate that the person claiming to be aggrieved may bring a civil
8 action under this part against the person, employer, labor organization, or
9 employment agency named in the verified complaint within one year from the date
10 of that notice. If the person claiming to be aggrieved does not request a right-to-
11 sue notice, the department shall issue the notice upon completion of its
12 investigation, and not later than one year after the filing of the complaint. A city,
13 county, or district attorney in a location having an enforcement unit established on
14 or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of
15 prosecuting HIV/AIDS discrimination claims, acting on behalf of any person
16 claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil
17 action under this part against the person, employer, labor organization, or
18 employment agency named in the notice. The superior and municipal courts of the
19 State of California shall have jurisdiction of those actions, and the aggrieved
20 person may file in any of these courts. An action may be brought in any county in
21 the state in which the unlawful practice is alleged to have been committed, in the
22 county in which the records relevant to the practice are maintained and
23 administered, or in the county in which the aggrieved person would have worked
24 or would have had access to the public accommodation but for the alleged
25 unlawful practice, but if the defendant is not found within any of these counties, an
26 action may be brought within the county of the defendant's residence or principal
27 office. A copy of any complaint filed pursuant to this part shall be served on the
28 principal offices of the department and of the commission. The remedy for failure
29 to send a copy of a complaint is an order to do so. Those actions may not be filed
30 as class actions or may not be maintained as class actions by the person or persons
31 claiming to be aggrieved where those persons have filed a civil class action in the
32 federal courts alleging a comparable claim of employment discrimination against
33 the same defendant or defendants. In actions brought under this section, the court,
34 in its discretion, may award to the prevailing party reasonable attorney's fees and
35 costs, including expert witness fees, except where the action is filed by a public
36 agency or a public official, acting in an official capacity.

37 (c) (1) If an accusation includes a prayer either for damages for emotional
38 injuries as a component of actual damages, or for administrative fines, or for both,
39 or if an accusation is amended for the purpose of adding a prayer either for
40 damages for emotional injuries as a component of actual damages, or for
41 administrative fines, or both, the respondent may within 30 days after service of
42 the accusation or amended accusation, elect to transfer the proceedings to a court
43 in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that

1 effect on the department, the commission, and the person claiming to be
2 aggrieved. The commission shall prescribe the form and manner of giving written
3 notice.

4 (2) No later than 30 days after the completion of service of the notice of election
5 pursuant to paragraph (1), the department shall dismiss the accusation and shall,
6 either itself or, at its election, through the Attorney General, file in the appropriate
7 court an action in its own name on behalf of the person claiming to be aggrieved
8 as the real party in interest. In this action, the person claiming to be aggrieved
9 shall be the real party in interest and shall have the right to participate as a party
10 and be represented by his or her own counsel. Complaints filed pursuant to this
11 section shall be filed in the ~~appropriate~~ superior court in any county in which
12 unlawful practices are alleged to have been committed, in the county in which
13 records relevant to the alleged unlawful practices are maintained and administered,
14 or in the county in which the person claiming to be aggrieved would have worked
15 or would have had access to public accommodation, but for the alleged unlawful
16 practices. If the defendant is not found in any of these counties, the action may be
17 brought within the county of the defendant's residence or principal office. Those
18 actions shall be assigned to the court's delay reduction program, or otherwise
19 given priority for disposition by the court in which the action is filed.

20 (3) A court may grant as relief in any action filed pursuant to this subdivision
21 any relief a court is empowered to grant in a civil action brought pursuant to
22 subdivision (b), in addition to any other relief that, in the judgment of the court,
23 will effectuate the purpose of this part. This relief may include a requirement that
24 the employer conduct training for all employees, supervisors, and management on
25 the requirements of this part, the rights and remedies of those who allege a
26 violation of this part, and the employer's internal grievance procedures.

27 (4) The department may amend an accusation to pray for either damages for
28 emotional injury or for administrative fines, or both, provided that the amendment
29 is made within 30 days of the issuance of the original accusation.

30 (d) (1) Notwithstanding subdivision (b), the one-year statute of limitations,
31 commencing from the date of the right-to-sue notice by the Department of Fair
32 Employment and Housing, to the person claiming to be aggrieved, shall be tolled
33 when all of the following requirements have been met:

34 (A) A charge of discrimination or harassment is timely filed concurrently with
35 the Equal Employment Opportunity Commission and the Department of Fair
36 Employment and Housing.

37 (B) The investigation of the charge is deferred by the Department of Fair
38 Employment and Housing to the Equal Employment Opportunity Commission.

39 (C) A right-to-sue notice is issued to the person claiming to be aggrieved upon
40 deferral of the charge by the Department of Fair Employment and Housing to the
41 Equal Employment Opportunity Commission.

42 (2) The time for commencing an action for which the statute of limitations is
43 tolled under paragraph (1) expires when the federal right-to-sue period to

1 commence a civil action expires, or one year from the date of the right-to-sue
2 notice by the Department of Fair Employment and Housing, whichever is later.

3 (3) This subdivision is intended to codify the holding in *Downs v. Department*
4 *of Water and Power of City of Los Angeles* (1997) 58 Cal.App.4th 1093.

5 (e) (1) Notwithstanding subdivision (b), the one-year statute of limitations,
6 commencing from the date of the right-to-sue notice by the Department of Fair
7 Employment and Housing, to the person claiming to be aggrieved, shall be tolled
8 when all of the following requirements have been met:

9 (A) A charge of discrimination or harassment is timely filed concurrently with
10 the Equal Employment Opportunity Commission and the Department of Fair
11 Employment and Housing.

12 (B) The investigation of the charge is deferred by the Equal Employment
13 Opportunity Commission to the Department of Fair Employment and Housing.

14 (C) After investigation and determination by the Department of Fair
15 Employment and Housing, the Equal Employment Opportunity Commission
16 agrees to perform a substantial weight review of the determination of the
17 department or conducts its own investigation of the claim filed by the aggrieved
18 person.

19 (2) The time for commencing an action for which the statute of limitations is
20 tolled under paragraph (1) shall expire when the federal right-to-sue period to
21 commence a civil action expires, or one year from the date of the right-to-sue
22 notice by the Department of Fair Employment and Housing, whichever is later.

23 **Comment.** Subdivision (b) of Section 12965 is amended to reflect unification of the municipal
24 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For the
25 jurisdictional classification of an action under this section, see Code of Civil Procedure Sections
26 85 (limited civil cases) and 580 (relief awardable).

27 Subdivision (c)(2) is amended to delete surplusage. Formerly, the provision referred to “the
28 appropriate superior or municipal court.” The reference to municipal court was deleted by 2003
29 Cal. Stat. ch. 62, § 118. Because there is only one superior court in each county, it is no longer
30 necessary to refer to the “appropriate” court in a specified county.

31 **Gov’t Code § 12980 (amended). Complaint, accusation, and civil action for housing**
32 **discrimination**

33 SEC. _____. Section 12980 of the Government Code is amended to read:
34 12980. This article governs the procedure for the prevention and elimination of
35 discrimination in housing made unlawful pursuant to Article 2 (commencing with
36 Section 12955) of Chapter 6.

37 (a) Any person claiming to be aggrieved by an alleged violation of Section
38 12955, 12955.1, or 12955.7 may file with the department a verified complaint in
39 writing that shall state the name and address of the person alleged to have
40 committed the violation complained of, and that shall set forth the particulars of
41 the alleged violation and contain any other information required by the
42 department.

1 The filing of a complaint and pursuit of conciliation or remedy under this part
2 shall not prejudice the complainant's right to pursue effective judicial relief under
3 other applicable laws, but if a civil action has been filed under Section 52 of the
4 Civil Code, the department shall terminate proceedings upon notification of the
5 entry of final judgment unless the judgment is a dismissal entered at the
6 complainant's request.

7 (b) The Attorney General or the director may, in a like manner, make, sign, and
8 file complaints citing practices that appear to violate the purpose of this part or any
9 specific provisions of this part relating to housing discrimination.

10 No complaint may be filed after the expiration of one year from the date upon
11 which the alleged violation occurred or terminated.

12 (c) The department may thereupon proceed upon the complaint in the same
13 manner and with the same powers as provided in this part in the case of an
14 unlawful practice, except that where the provisions of this article provide greater
15 rights and remedies to an aggrieved person than the provisions of Article 1
16 (commencing with Section 12960), the provisions of this article shall prevail.

17 (d) Upon the filing of a complaint, the department shall serve notice upon the
18 complainant of the time limits, rights of the parties, and choice of forums provided
19 for under the law.

20 (e) The department shall commence proceedings with respect to a complaint
21 within 30 days of filing of the complaint.

22 (f) An investigation of allegations contained in any complaint filed with the
23 department shall be completed within 100 days after receipt of the complaint,
24 unless it is impracticable to do so. If the investigation is not completed within 100
25 days, the complainant and respondent shall be notified, in writing, of the
26 department's reasons for not doing so.

27 (g) Upon the conclusion of each investigation, the department shall prepare a
28 final investigative report containing all of the following:

29 (1) The names of any witnesses and the dates of any contacts with those
30 witnesses.

31 (2) A summary of the dates of any correspondence or other contacts with the
32 aggrieved persons or the respondent.

33 (3) A summary of witness statements.

34 (4) Answers to interrogatories.

35 (5) A summary description of other pertinent records.

36 A final investigative report may be amended if additional evidence is later
37 discovered.

38 (h) If an accusation is not issued within 100 days after the filing of a complaint,
39 or if the department earlier determines that no accusation will issue, the
40 department shall promptly notify the person claiming to be aggrieved. This notice
41 shall, in any event, be issued no more than 30 days after the date of the
42 determination or 30 days after the date of the expiration of the 100-day period,
43 whichever date first occurs. The notice shall indicate that the person claiming to be

aggrieved may bring a civil action under this part against the person named in the verified complaint within the time period specified in Section 12989.1. The notice shall also indicate, unless the department has determined that no accusation will be issued, that the person claiming to be aggrieved has the option of continuing to seek redress for the alleged discrimination through the procedures of the department if he or she does not desire to file a civil action. The superior ~~and municipal~~ courts of the State of California shall have jurisdiction of these actions, and the aggrieved person may file in ~~any of~~ these courts. The action may be brought in any county in the state in which the violation is alleged to have been committed, or in the county in which the records relevant to the alleged violation are maintained and administered, but if the defendant is not found within that county, the action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. In a civil action brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorneys' fees.

(i) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be made public, unless otherwise agreed by the complainant and respondent, and the department determines that the disclosure is not required to further the purposes of the act.

(j) All agreements reached in settlement of any housing discrimination complaint filed pursuant to this section shall be agreements between the respondent and complainant, and shall be subject to approval by the department.

Comment. Subdivision (h) of Section 12980 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For the jurisdictional classification of an action under this section, see Code of Civil Procedure Sections 85 (limited civil cases) and 580 (relief awardable).

Penal Code § 977 (amended). Presence of defendant and counsel

SEC. _____. Section 977 of the Penal Code is amended to read:

977. (a) (1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.

(b)(1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those

1 portions of the trial when evidence is taken before the trier of fact, and at the time
2 of the imposition of sentence. The accused shall be personally present at all other
3 proceedings unless he or she shall, with leave of court, execute in open court, a
4 written waiver of his or her right to be personally present, as provided by
5 paragraph (2). If the accused agrees, the initial court appearance, arraignment, and
6 plea may be by video, as provided by subdivision (c).

7 (2) The accused may execute a written waiver of his or her right to be personally
8 present, approved by his or her counsel, and the waiver shall be filed with the
9 court. However, the court may specifically direct the defendant to be personally
10 present at any particular proceeding or portion thereof. The waiver shall be
11 substantially in the following form:

12 “WAIVER OF DEFENDANT’S PERSONAL PRESENCE”

13 “The undersigned defendant, having been advised of his or her right to be
14 present at all stages of the proceedings, including, but not limited to, presentation
15 of and arguments on questions of fact and law, and to be confronted by and cross-
16 examine all witnesses, hereby waives the right to be present at the hearing of any
17 motion or other proceeding in this cause. The undersigned defendant hereby
18 requests the court to proceed during every absence of the defendant that the court
19 may permit pursuant to this waiver, and hereby agrees that his or her interest is
20 represented at all times by the presence of his or her attorney the same as if the
21 defendant were personally present in court, and further agrees that notice to his or
22 her attorney that his or her presence in court on a particular day at a particular time
23 is required is notice to the defendant of the requirement of his or her appearance at
24 that time and place.”

25 (c) The court may permit the initial court appearance and arraignment ~~in~~
26 ~~municipal or superior court~~ of defendants held in any state, county, or local facility
27 within the county on felony or misdemeanor charges, except for those defendants
28 who were indicted by a grand jury, to be conducted by two-way electronic
29 audiovideo communication between the defendant and the courtroom in lieu of the
30 physical presence of the defendant in the courtroom. If the defendant is
31 represented by counsel, the attorney shall be present with the defendant at the
32 initial court appearance and arraignment, and may enter a plea during the
33 arraignment. However, if the defendant is represented by counsel at an ~~initial~~
34 ~~hearing in superior court~~ arraignment on an information in a felony case, and if the
35 defendant does not plead guilty or nolo contendere to any charge, the attorney
36 shall be present with the defendant or if the attorney is not present with the
37 defendant, the attorney shall be present in court during the hearing. The defendant
38 shall have the right to make his or her plea while physically present in the
39 courtroom if he or she so requests. If the defendant decides not to exercise the
40 right to be physically present in the courtroom, he or she shall execute a written
41 waiver of that right. A judge may order a defendant’s personal appearance in court
42 for the initial court appearance and arraignment. In a misdemeanor case, a judge

may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(d) Notwithstanding subdivision (c), if the defendant is represented by counsel, the attorney shall be present with the defendant in any county exceeding 4,000,000 persons in population.


Comment. Subdivision (c) of Section 977 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

In the first sentence, the reference to “municipal or superior court” is deleted because municipal courts no longer exist and all arraignments are held before a judicial officer of the superior court.

In the third sentence, the reference to “an initial hearing in superior court in a felony case” is replaced by a reference to “an arraignment on an information in a felony case.” This revision is necessary to clarify the type of proceeding to which the sentence applies.

Before unification, a felony defendant was either (1) indicted and arraigned on the indictment in superior court or (2) arraigned on a complaint before a magistrate in municipal court and, if held to answer at a preliminary hearing, later arraigned on an information in superior court. Because subdivision (c) is expressly inapplicable to an indicted defendant, the reference to “an initial hearing in superior court in a felony case” in the third sentence was sufficient to indicate that the sentence pertained to an arraignment on an information, not an arraignment on a felony complaint.

Now that the municipal and superior courts have unified, both an arraignment on a felony complaint and an arraignment on an information occur in superior court (technically, the arraignment on the complaint occurs before a superior court judge acting as magistrate). The phrase “initial hearing in superior court in a felony case” is thus vague; it could encompass either an arraignment on a felony complaint or an arraignment on an information or both. The amendment eliminates this ambiguity consistent with the pre-unification status quo.

 **Note.** The amendment shown above will require adjustment if Assembly Bill 2174 (Villines) is enacted and amends Penal Code Section 977.

Penal Code § 977.2 (amended). Appearance and arraignment by two-way electronic audiovideo communication

SEC. _____. Section 977.2 of the Penal Code is amended to read:

977.2. (a) Notwithstanding Section 977 or any other law, in any case in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for all court appearances in superior court, except for the preliminary hearing, trial, judgment and sentencing, and motions to suppress, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Nothing in this section shall be interpreted to eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom. For those court appearances that the department determines to conduct by two-way electronic audiovideo communication, the department shall arrange for two-way electronic audiovideo communication

1 between the superior court and any state prison facility located in the county. The
2 department shall provide properly maintained equipment and adequately trained
3 staff at the prison as well as appropriate training for court staff to ensure that
4 consistently effective two-way communication is provided between the prison
5 facility and the courtroom for all appearances that the department determines to
6 conduct by two-way electronic audiovideo communication.

7 (b) If the defendant is represented by counsel, the attorney shall be present with
8 the defendant at the initial court appearance and arraignment, and may enter a plea
9 during the arraignment. However, if the defendant is represented by counsel at an
10 ~~initial hearing in superior court~~ arraignment on an information or indictment in a
11 felony case, and if the defendant does not plead guilty or nolo contendere to any
12 charge, the attorney shall be present with the defendant or if the attorney is not
13 present with the defendant, the attorney shall be present in court during the
14 hearing.

15 (c) In lieu of the physical presence of the defendant's counsel at the institution
16 with the defendant, the court and the department shall establish a confidential
17 telephone and facsimile transmission line between the court and the institution for
18 communication between the defendant's counsel in court and the defendant at the
19 institution. In this case, counsel for the defendant shall not be required to be
20 physically present at the institution during any court appearance that is conducted
21 via electronic audiovideo communication. Nothing in this section shall be
22 construed to prohibit the physical presence of the defense counsel with the
23 defendant at the state prison.

24 **Comment.** Subdivision (b) of Section 977.2 is amended to reflect unification of the municipal
25 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

26 The reference to "an initial hearing in superior court in a felony case" is replaced by a reference
27 to "an arraignment on an information or indictment in a felony case." This revision is necessary
28 to clarify the types of proceeding to which the sentence applies.

29 Before unification, a felony defendant was either (1) indicted and arraigned on the indictment
30 in superior court or (2) arraigned on a complaint before a magistrate in municipal court and, if
31 held to answer at a preliminary hearing, later arraigned on an information in superior court. The
32 reference to "an initial hearing in superior court in a felony case" was thus sufficient to indicate
33 that the sentence pertained to an arraignment on an information or indictment, not an arraignment
34 on a felony complaint.

35 Now that the municipal and superior courts have unified, all three kinds of arraignment occur
36 in superior court (technically, an arraignment on a felony complaint occurs before a superior
37 court judge acting as magistrate). The phrase "initial hearing in superior court in a felony case" is
38 thus imprecise; it could be construed to encompass an arraignment on a felony complaint, as well
39 as an arraignment on an information or indictment. The amendment eliminates this ambiguity
40 consistent with the pre-unification status quo.